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ABSTRACT

This report by the United States Commission on Civil Rights focuses on the desegregation of metropolitan schools. It begins by summarizing the research on the causes of racial isolation in metropolitan areas, and connects this research to issues raised in Milliken V. Bradley. In this case, the Supreme Court noted that legal decisions affecting school systems depended on whether metropolitan school and housing segregation was due to private choice and demographic factors, or whether they were due to racial policies in which the government participated. This report concludes that racial segregation in the inner city is due to policies of racial containment to which government contributes. Next, the Commission examines the remedial issues connected with metropolitan desegregation. Some have assumed that a metropolitan remedy poses major administrative and fiscal problems, that it breaches traditions of local control, that it involves massive busing, and that it is busing that provokes the resistence to desegregation. Each of these objections is analyzed with some care along with the positive advantages that may be associated with a metropolitan remedy. Finally, the state of the law and the current political context in which judicial decision making is occurring is discussed. This discussion indicates some of the cooperative steps that should be taken for constructive solutions. (Author/AM)

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STATEMENT ON METROPOLITAN SCHOOL DESEGREGATION

A Report of the United States
Commission on Civil Rights

February 1977

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LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
February 1977

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315 as amended.

The Commission has observed the development of various remedies to school segregation over most of the last two decades and believes that metropolitan desegregation is a workable solution which is underutilized.

Most black children in America attend predominantly minority schools that are intensely segregated. School segregation is most acute on our cities where the majority of black and Hispanic American children live and attend racially isolated public schools. These cities include several school districts with noticeable disparity in enrollment of minority-majority students. School districts often reflect segregated housing patterns. Thus, it is not uncommon for several large cities in this country to have inner city school districts that encompass large minority populations, surrounded by several districts that contain very few minorities. It is clear that much of the racial segregation that exists in these cities is the result of deliberate discrimination which violates the United States Constitution.

This report discuss the feasibility of metropolitan school desegregation as a solution to such problems. Interdistrict school desegregation remedies are administratively feasible and such remdies need not impair local control over education; nor would such remedies require excessive busing. This method of desegregation offers the prospect of stable integration and maximizes prospects for educational gains. Further, we submit, metropolitan school desegregation plans offer educational advantages beyond those of desegregation.

MAR 17 1977

Several communities have successfully utilized metropolitan or interdistrict remedies. This method of providing equal educational opportunity is appealing since there is a trend toward consolidation or reduction in the number of existing school systems. Metropolitanization is currently utilized to solve other area-wide problems in government and in private endeavors. The Commission believes that voluntary metropolitan school desegregation should be encouraged by government at all levels.

This report also includes a discussion of the legal aspects of metropolitan school desegregation. While case law is developing in this area, existing decisions indicate that interdistrict school desegregation is a solution which courts may turn to in an effort to remedy area-wide constitutional violations.

In this and our recent reports on school desegregation, we realize that much needs to be done in order to make equal educational opportunity a reality. The Commission believes that the information contained in this report will help to clarify some of the complex issues in this area and will be useful to those responsible for education in this country.

We urge your consideration of the position presented in this report.

Respectfully,

ARTHUR S. FLEMMING
Chairman

ACKNOWLEDGMENTS

The Commission has reviewed the specific issue of metropolitan school desegregation over the last 3 years. Several contractors, as well as staff, have been responsible for materials included in this report.

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I. INTRODUCTION

More than two decades after the Supreme Court's decision in Brown v. Board of Education,[1] the segregation of minority children in the public schools of the largest cities remains one of the most vexing problems in the Nation. In the wake of two great migrations--the movement of black people from the rural South to big cities throughout the country and of whites from central cities to suburbs--the racial composition of these school systems has changed dramatically from predominantly white to predominantly black.

The conditions that exist in most of these systems--in Chicago, Detroit, Philadelphia, New York, Atlanta, Cleveland, St. Louis, and elsewhere--are generally acknowledged to be distressing. Too many young people are not being equipped by the public schools to become productive and independent members of society. The public schools are failing in the great goal set for them by Thomas Jefferson: "to bring into action that mass of talents which lies buried in poverty...."

It also has become abundantly clear in recent years that much of the racial segregation that exists in big schools--in the North as well as the South--violates the Constitution of the United States. Federal courts and investigative agencies, including the United States Commission on Civil Rights, have found that school segregation has not come about accidentally or because of segregated housing patterns but through deliberate discrimination by government officials.[2]

There is no question that when such deliberate discrimination is shown, desegregation is required, but one question of the greatest practical importance remains unsettled--whether remedial relief may include plans that encompass areas of the suburbs as well as the city. If the answer to this question is negative, the right to a desegregated education will become more theoretical than real, for minority children in metropolitan areas will continue to attend city schools composed principally of minority and poor children and surrounded by suburban schools that are more affluent and overwhelmingly white.

The one major case in which the Supreme Court has considered the issues surrounding school desegregation on a metropolitan basis has left the matter unresolved. In _Milliken_ v. _Bradley_[3] a bare majority of the Court decided that the case had not been made for a metropolitan school remedy in Detroit, but indicated that such a remedy would be ordered if it were established that the violation of the Constitution affected both city and suburban districts. In broad terms, Milliken said that the legal result turns on whether the segregation of public schools and housing in metropolitan areas is a consequence of private choice and demographic factors, or whether it is a product of policies of racial containment in which government has participated. This Commission has done considerable research and investigation on the cause of racial isolation in metropolitan areas, and in chapter II of this report we summarize this work as it bears on the issues the Court indicated were relevant in Milliken.

In chapter III the Commission examines the remedial issues connected with metropolitan desegregation. Some have assumed without careful examination that a metropolitan remedy poses major administrative and fiscal problems, that it breaches traditions of local control, that it involves massive busing, and that it is busing that provokes the resistance to desegregation. Each of these objections is analyzed with some care along with the positive advantages that may be associated with a metropolitan remedy.

Fortunately, it is possible to discuss these questions in a real, not a hypothetical, context. In several places in the South, desegregation has already taken place on a metropolitan basis since the school districts are urban counties and no political boundary separates city from suburbs. The experience of these districts can tell us a great deal about whether metropolitan desegregation works.

Chapter IV discusses the state of the law and the current political context in which judicial decisionmaking is occurring. It has become almost axiomatic that the success of desegregation depends not just upon the courts but upon leadership that is exercised by coordinate branches of the Federal Government and by educators and others in positions of responsibility at the State and local level. The discussion indicates some of the cooperative steps that should be taken if constructive solutions are to be found.

The Commission is issuing this report in the hope that it will promote rational consideration of what we regard as one of the most important public policy issues of our times.

Notes to Chapter I

1. 347 U.S. 483 (1954).

2. See, e.g., U.S. Commission on Civil Rights, _Racial Isolation in the Public Schools_ (1967).

3. 418 U.S. 717 (1974).

4. _Id_.

II. THE PROBLEMS: SCHOOL SEGREGATION IN LARGE CITIES

Its Dimensions

While substantial progress has been made in public school desegregation over the last decade, millions of minority children remain in segregated schools. The most recent enrollment statistics compiled by the Department of Health, Education, and Welfare (HEW) for the school year 1974 show that two of every three black children in the country attend predominantly minority schools and two of every five attend schools that are intensely segregated (90 to 100 percent minority in their enrollment). Hispanic American children are in a similar situation: two of every three are in predominantly minority schools and three in ten are in intensely segregated schools.[1]

To a very great extent the remaining problems of segregation by race and national origin in public schools are problems that exist in big cities. While nationally, as noted, two of every five black children attend intensely segregated schools, in the 26 largest cities of the United States almost three of every four black pupils are assigned to such schools.[2] In Pennsylvania, for example, the two largest cities--Pittsburgh and Philadelphia--account for almost all (98.4 percent) of the black students who attend intensely segregated schools. Yet these cities enroll only

73.1 percent of the total number of black students in the State. In New York State, less than one-half of the black students are in intensely segregated schools, but almost nine of every ten such children are in New York City, which enrolls only 73.2 percent of the total black school population in the State. In Ohio about half of all black public school students are assigned to intensely segregated schools and almost three-quarters of the students so assigned are in the three largest cities in the State, although these cities account for only 53.5 percent of the State enrollment of black children.[3]

Although the South has a far better record of school desegregation than the North,[4] a similar pattern of racial isolation in big cities emerges. The seven largest cities in Texas account for less than half of the State's black student enrollment, but almost 80 percent of the black students are assigned to intensely segregated schools. The three largest urban areas of Georgia contain only 22.6 percent of black public school pupils in the State but account for almost half of those enrolled in intensely segregated public schools.[5]

In sum, while many minority students in rural communities, towns, and smaller cities have been enrolled in desegregated schools during the past decade, the great majority of black and Hispanic American children who live in large cities remain in racially isolated public schools. The dimensions of these remaining problems of segregation are very large indeed, for the big cities are where most minority children live. According to 1970 census statistics, 58.2 percent of all blacks reside in central cities, with 36 percent living in the central cities of the 26 largest metropolitan areas (SMSAs) of the Nation.[6] About 50 percent of all Hispanic citizens reside in central cities, with 27 percent living in the central cities of the 26 largest metropolitan areas.[7]

The difficulty of dealing with racial isolation in very large cities is compounded by the fact that in many places the problem has become not simply the existence of segregated schools but of segregated school districts. As the black and Hispanic populations of large cities have grown, and as the cities have lost white residents to their suburbs, the racial character of city public schools has changed drastically. When Brown v. Board of Education was decided by the Supreme Court in 1954, the minority enrollments of most big city school systems were relatively small. Twenty years later most big city systems were predominantly black and Hispanic in their enrollment. For example, the five largest school systems in the Nation--

those of New York, Chicago, Los Angeles, Philadelphia, and Detroit--contain 18 percent of the black students and 22 percent of the Hispanic students of the Nation. In 1974 two of these school districts (Chicago and Detroit) were more than 70 percent minority enrollment, two others (New York, and Philadelphia) were more than 60 percent minority, and one (Los Angeles) was more than 50 percent minority.[8] Other large school systems had a comparable or greater degree of racial concentration. The school systems of Cleveland and St. Louis were more than 60 percent black in their enrollment; Richmond and Baltimore were more than 70 percent black; and Atlanta and Wilmington, Delaware, were more than 80 percent black in pupil enrollment.[9]

Within many of these big city systems many individual schools contain disproportionately high percentages of minority or white children. In Baltimore, for example, in 1972 whites constituted only 30 percent of the system's enrollment, but about two-thirds of these white students were in schools that were 80 to 100 percent white. In Dallas, Texas, Anglo whites constituted only half of the enrollment of the system, but most of these pupils were in schools that were 80 to 100 percent Anglo white.

But the problem of segregation that exists within big city districts pales when compared with the problem of segregation among neighboring districts within the same metropolitan area. Baltimore, with its 70 percent minority enrollment, is surrounded by counties in the metropolitan area that are 92 percent white in their public school population. Wilmington, Delaware, which has a public school enrollment that is 85 percent black, is part of the New Castle County metropolitan area whose other districts have a school population that is 94 percent white.[10]

Accordingly, even if every school in the city of Wilmington perfectly reflected the racial composition of the district as a whole (85 percent black), these schools would still be regarded as racially identifiable in a metropolitan area whose public school enrollment is 79 percent white and whose suburbs are 94 percent white.[11]

It is true that in many places segregation within big city systems is under attack, and in several cases Federal courts have found that racially isolated schools are a product of the deliberate segregative practices of city school authorities.[12] But few people regard desegregation plans that affect the city alone as providing stable or satisfactory solutions. In the words of Eleanor Holmes Norton, chairman of the New York City Human Relations Commission:

> To simply distribute a diminishing number of whites thinner and thinner is obviously to get embarked on a process that will not result in integration. A school with 20 percent white students and 80 percent minority students is not integrated....That's why the metropolitan approach has to be looked at very closely.[13]

Moreover, while the degree of racial separation between city and suburban schools has already reached a very high level, the evidence indicates that the situation has not yet stabilized. Major cities are continuing to experience significant declines in their white population.

In Detroit, for example, from 1970 to 1975 there was a population loss of about 200,000 people. Most of this loss was white, and the black proportion of the city's population increased from 44 percent to more than 50 percent during the same time.[14] Similarly, in Milwaukee, there was a 10 percent loss in the white population during the early seventies accompanied by a 20 percent increase in the black population.[15] Thus, plans in big cities that provide for intradistrict desegregation are not likely to remain stable whatever the level of minority enrollment in the system.[16]

In short, we have come to a point where substantial integration of public schools can be accomplished only if the area covered is larger than the city itself. If, on the other hand, the responsibility to desegregate ends at the city line, the decision in Brown v. Board of Education will provide little or no tangible benefit to many millions of children who live in large cities. For these children, racially isolated education will continue to be a reality for the foreseeable future.

Causes

In determining what, if any, remedial steps should be taken to deal with the racial isolation of students in the public schools of metropolitan areas, an assessment of the factors that have produced this widespread segregation is important. If, for example, the segregated character of schools and housing in metropolitan areas can be explained as reflecting choices freely made by minority and white citizens, it might be difficult to muster strong arguments for compelled attendance by students from the two groups in the same public schools.

If, on the other hand, segregation is the product of governmental constraints that have deprived some people of the choice of where to live and where to send their children to school, policy as well as law may argue for intervention to remove these constraints and to undo the wrongs in which government has been implicated.

This is essentially the distinction that some Justices of the Supreme Court sought to make in the Detroit case of Milliken v. Bradley. There the Court considered the question of whether, and in what circumstances, a metropolitan school desegregation remedy would be justified. Mr. Justice Stewart, concurring in a 5-4 decision denying such relief, said that a "cross district remedy" would have been justified if it had been shown that State officials "had contributed to the separation of the races...by purposefully racially discriminatory use of state housing or zoning laws."[17] Justice Stewart, however, was not persuaded that such discriminatory practices had caused the segregation that exists in the Detroit metropolitan area, for he added:

> It is this essential fact of a predominantly Negro school population in Detroit--caused by unknown and perhaps unknowable factors such as in-migration, birth rates, economic changes or cumulative acts of private racial fears--that accounts for the "growing core of Negro schools," a "core" that has grown to include virtually the entire city. The Constitution simply does not allow Federal courts to attempt to change that situation unless and until it is shown that the

> State, or its political subdivisions have contributed to cause the situation to exist.[18]

The factors that have produced racial separation between cities and suburbs undoubtedly are complex. Over the course of the past half century, black and Hispanic American citizens in large numbers have come to major cities like Detroit in search of economic opportunity. During the same period, and particularly over the past 20 years, economic factors such as those that have prompted a shift of industry from city to suburbs, have helped draw many whites to suburbia. And it is undoubtedly true that private racial fears and prejudices (which Justice Stewart apparently distinguishes from institutional or governmental discrimination) have spurred the movement of many white families to the suburbs.

But when all the factors affecting the migration of minorities to central cities and the movement of whites to the suburbs are accounted for, an important question remains: why are black citizens not found in significant numbers in the suburban sections of metropolitan areas? On this critical issue, the evidence of numerous investigations and studies is clear. The concentration of blacks is not to any significant degree the result of individual choice or even income differences among the races. Rather, such segregation has come about because of the discriminatory practices of important institutions in our society, practices which government has tolerated, fostered, and in some instances mandated. Despite changes in national policy, many of these practices persist to the present day.

Racial concentration in metropolitan areas. The racial isolation of children in the public schools of metropolitan areas substantially reflects patterns of residential segregation. Census statistics for 1970 showing black people as a proportion of the population of the largest cities and their suburbs reveal in a striking fashion the racial dividing line between city and suburbs.

In Chicago, for example, blacks constituted 33 percent of the population of the central city, but only 3 percent of the population of the suburbs. The city of Detroit was 44 percent black in 1970, while its suburbs were only 4 percent black. Baltimore was 46 percent black in 1970, and its suburban population was only 3 percent black.[19]

In Boston, one in every six residents is a black citizen, while in its suburbs only one person in every 100 is black. In Dallas, one person in four is black, and in the suburbs one person in every 50 is black. Similar patterns exist in other metropolitan areas.

These proportions do represent an increase in the migration of black families from central cities to suburbs during the 1960s, but, with some exceptions, the movement has been slow and has not resulted in residential integration so much as the extension of central city ghetto areas and the establishment of a few suburban black enclaves. In some places, such as Baltimore, Detroit, Dallas, and Houston, the movement of blacks into suburbs has been so dwarfed by the migration of whites that the percentage of blacks in the suburbs actually declined during the 1960s.[20]

Racial segregation is not explained by income differences. Statistical analysis cannot demonstrate with certainty the causes of this striking racial separation in metropolitan areas, but it can help to place in perspective some of the factors that may be involved. For example, it has been widely assumed that a basic reason for racially segregated residential patterns is that black families do not earn as much as whites and thus cannot afford housing in generally affluent suburban neighborhoods. Yet statistical analyses of residential patterns suggest that economic differences account for only a small part of the explanation of racial separation.

Demographer Reynolds Farley has calculated the percentage of black families that might be expected to live in the suburbs if the only factor limiting their residential location were income and has concluded that the proportion of black families in suburbs would be much higher than it actually is. He notes that if blacks retained their present incomes but were represented in suburbs to the same extent as whites at each income level, 43 percent of all black families in the New York City metropolitan area would live in suburbs instead of the 17 percent who actually do live there. For Chicago, the proportion of blacks "expected" to reside in the suburbs on the basis of their income is 46 percent while the actual percentage is 8. In other cities the gap is of similar proportions.[21]

Further evidence that the causes of racial segregation are not primarily economic is found in the fact that well-to-do whites are more likely to have as their neighbors lower income whites than affluent blacks. In Chicago in 1970 the segregation index for white families earning more than $25,000 compared to white families earning $3,000 to $4,000 was 55. Yet the segregation index for these well-to-do white families as compared to black families in the same income group was 94. Affluent whites were much more segregated from blacks of similar income than they were from poor white families.[22]

In sum, while many neighborhoods contain homogeneous income groups and while large gaps continue to exist between the incomes of black and white families, these factors do not explain why the line between city and suburbs has become a barrier for so many black citizens. Demographer Karl Taeuber has estimated that no more than 20 to 25 percent of the racial segregation that exists in metropolitan areas can be attributed to economic factors.[23]

Racial segregation is not explainable as an exercise of free choice by black citizens. A further hypothesis that would explain residential segregation in noninvidious terms is that, contrary to the "melting pot" theory, most nationality and racial groups in the United States seek to retain their cultural identities by living in ethnically homogeneous neighborhoods and that black people are no exception. Here too, however, various kinds of social science analysis tend to negate "freedom of choice" as an important factor in the segregated character of metropolitan areas.

Demographic analysis, for example, shows that blacks are far more segregated than white ethnic groups. A segregation index calculated for Detroit in 1960 compares the residential distribution of people born in Poland or having parents born in Poland to the residential distribution of all other whites. The segregation index is 52, markedly lower than the corresponding index for blacks, which is 85.[24] In fact, these figures undoubtedly understate the differences in residential concentration between Poles and blacks, because the census does not identify third, fourth, and fifth generation Poles who may have left their ethnic neighborhoods and become entirely assimilated. In short, while the concept of America as a melting pot may be overdrawn, the notion that Americans of European origin continue to maintain their cultural identify by banding together in homogeneous neighborhoods is unsupported by the facts.

Nor can it be argued persuasively that the reason people are far more segregated by race than by ethnicity is that blacks are somehow more "clannish" than white ethnic groups. Indeed, evidence concerning the views of black families on housing integration is to the contrary.

The NAACP--the organization with the largest black constituency in the Nation--has consistently espoused the goal of residential integration, as have other major civil rights groups such as the National Urban League. Public opinion surveys show that most black families continue to express a preference for racially integrated neighborhoods--fewer than one black in five states a preference to live in all-black neighborhoods.[25] Attitudes toward integration undoubtedly are a complex of hopes and fears; few blacks may want to assume the risks of becoming pioneers and not many may wish to incur the feelings of isolation attendant on being the only black family on the block. For most, it appears that integrated neighborhoods are perceived as an important part of the quest for better living conditions.

The role of government in racial containment. Demographic and other social science evidence strongly, if circumstantially, suggests that racial discrimination is a prime factor in the current segregated conditions under which most urban blacks live. When other evidence is examined it becomes clear not only that racial discrimination is a major causative factor, but that government at all levels has played a key role in creating, maintaining, and perpetuating the ghetto.

- **The historical roots of big city ghettos.** Although there are important variations in the history of different areas, some common threads run through the case studies of the development of black ghettos in large cities. In most urban areas blacks were not rigidly segregated during the 19th century, when their numbers in the cities were quite small. But racial ghettos began to develop during the first two decades of the 20th century, when black migration to many cities increased markedly.

In some areas local authorities enacted zoning ordinances which actually mandated the segregation of neighborhoods along racial lines. Although these ordinances were ruled unconstitutional by the Supreme Court in 1917,[26] a number of Southern cities continued to enforce them.[27] In other cities a combination of factors--including private prejudice and choice, real estate and other business practices, and government action--contributed to the development of physical ghettos.[28]

While the process was complex, the important fact, in the words of Allen Spear, who chronicled the history of blacks in Chicago, was that "the development of the physical ghetto...was not the result chiefly of poverty; nor did Negroes cluster out of choice. The ghetto was primarily the product of white hostility...."[29]

With the legal demise of racial zoning ordinances, private covenants in deeds racially restricting the transfer of homes came into wide use. These covenants enabled white homeowners in an area to exclude minorities completely from access to neighborhoods. The strength of these private agreements derived in large measure from the fact that they were capable of enforcement in State courts and that the Supreme Court indicated that such enforcement did not violate the Constitution.[30]

•The role of government during the 1930s and 40s. During the early 1930s the Federal Government emerged as an important actor in shaping the housing patterns of the Nation. The stance that Federal officials took toward racial discrimination in this early critical period helped to assure the racially segregated character of metropolitan areas.

The Federal Government initially intervened during the depression to prevent the collapse of the housing market. One of the major instrumentalities chosen to accomplish this goal--the mortgage insurance program of the Federal Housing Administration--eventually became a key factor in fostering the growth of the suburbs. By eliminating the risks to lenders of making mortgage loans available, the Federal Government was able to induce financial institutions to provide favorable terms, including lower down payments and interest rates and longer periods of repayment, which brought standard housing within the reach of many millions of Americans. In doing so, however, the Federal Housing Administration felt impelled to adopt guidelines for financial institutions which would help to protect the soundness of the Federal investment. The document containing these standards, the FHA Underwriters' Manual, stated candidly the Federal Government's policy toward housing opportunities for minorities and toward racial integration. To qualify for mortgage insurance, new subdivisions had to protect against influences that would adversely affect the soundness of the project and: "Important among adverse influences...are the following: Infiltration of inharmonious racial or nationality groups."[31]

To guard against these influences, the manual prescribed the "enforcement of proper zoning regulations and appropriate deed restrictions," thus placing the Federal stamp of approval on racially restrictive covenants. Indeed, among the detailed concerns of the FHA about preserving racial homogeneity one was of particular interest. Even if the subdivision itself excluded "inharmonious racial groups:"

> ...if the children of people living in such an area are compelled to attend school where the majority or a goodly number of the pupils represent a far lower level of society or incompatible racial element, the neighborhood

> under consideration will prove far less stable than if this condition did not exist.[32]

The FHA-prescribed remedy for this "evil" was interesting: assign children to schools outside of their neighborhood in order to preserve racial and class segregation.

The consequence of these policies was not only to promote the development of new segregated neighborhoods, but to exclude blacks and other minorities from opportunities for homeownership. The policies declared by the manual were continued explicity until the late 1940s. Encouragement of the use of racially restrictive convenants was not dropped until after the Supreme Court ruled such covenants unenforceable as a violation of the 14th amendment.[33] By that time, the practices of the housing industry and the Federal Government were well entrenched. FHA was a dominant factor in the mortgage market, insuring almost half of all loans for new housing, and from the Second World War until 1959 it was estimated that only 2 percent of this housing was occupied by blacks.[34]

Black families did participate in public housing for low-income persons, the other major government program initiated during the New Deal, but on a segregated basis. Local government authorities were given responsibility for administering the Federal funds provided to construct housing for low-income people, but were required only to assure that blacks received a proportionate share of the housing built. "Separate but equal" remained the official policy of the Federal Government and of many local housing authorities in the North as well as the South until after the Supreme Court's decision in Brown v. Board of Education in 1954.[35] Although some public housing projects were desegregated, the practice of segregation both in the location of projects and in the assignment of tenants persisted long after the policy was declared unconstitutional, and in many cities such projects today form the core of the black ghetto.[36]

Other State and local agencies did their part to sanction and codify the discriminatory practices of the housing industry. During the 1940s State agencies charged with regulating real estate brokers, such as those in Michigan and Delaware, included in their codes of ethics provisions stating that realtors should not introduce into a neighborhood "members of any race or nationality...whose presence will clearly be detrimental to property values."[37]

•Continuing discrimination during the 1950s and 60s. By the 1950s the Federal Government had committed itself, through the urban renewal program, to efforts to revitalize blighted central city areas. In practice the "slum clearance" program meant the destruction of a great many homes occupied by poor black families. By 1967 about 400,000 units of housing in urban renewal areas had been destroyed, displacing many poor black families.[38] The opportunity to use urban renewal sites to develop racially and economically integrated neighborhoods was rejected. Less than 3 percent of the units destroyed were replaced by new public housing and blacks and other minority families were generally denied access to the housing built with urban renewal and other Federal subsidies.[39]

Neither did Federal or local authorities carry out their stated obligation to assist displaced minorities in locating decent, safe, and sanitary housing outside ghetto areas. Instead, those dislocated were largely left to fend for themselves in the discriminatory housing market and most wound up in other blighted, racially concentrated neighborhoods.[40]

Large numbers of black inner-city residents were also displaced by federally-aided highway programs. These families, too, were left to their own devices and pushed into ghetto areas. Often those who were not displaced found their neighborhoods cut off from access to adjacent areas by the construction of highways and other public works projects. At the same time, the highway program facilitated the movement of people to the suburbs--to jobs and housing that were often available only to whites.*[1]

During the 1950s and 60s, although official policies of racial separation were dropped, segregation in public housing continued and intensified. As low-income blacks migrated to central cities by the thousands, the program increasingly came to be viewed as housing for racial minorities, and the issue became not merely how tenants would be assigned within projects but where the projects themselves could be located.

In Chicago, for example, a Federal court could find as late as 1969 that each city alderman had been given veto power over the location of public housing in the area he represented and that the exercise of this authority had resulted in rejection of 99-1/2 percent of the housing proposed to be located in white areas.*[2] Nor have sites for the construction of public housing been made available in any substantial quantity in the suburbs. Since local option governs the program, many suburban jurisdictions have chosen not to establish local housing authorities and, of the agencies that have been set up, many have never built any units. Central city housing agencies often possess extraterritorial jurisdiction, but their efforts to find sites in the suburbs have been thwarted by the refusal of suburban governments to enter into cooperation agreements. Such refusals have sometimes been clearly based on the fact that the occupants of the developments would be poor black families.[43]

The race barriers that have made sites unavailable in the suburbs and white areas of central cities, along with cost constraints, resulted in a public housing program of massive highrise developments occupied almost exclusively by racial minorities and located in black areas of the central city. These projects--the Pruitt-Igoes of St. Louis and the Robert Taylor Homes of Chicago--have become symbols of the failures of policies of racial containment and the resulting pathology and social chaos of ghetto life.[44]

The residential patterns established and entrenched by government's sanction of racial discrimination have not been undone by the adoption of national policies favoring equal housing opportunity. The Federal Government, having abandoned explicit encouragement of racial discrimination for policies of neutrality during the 1950s, moved toward affirmative support for fair housing in the 1960s, beginning with President Kennedy's 1962 Executive order (E.O. 11063) prohibiting discrimination in federally-assisted housing and culminating in 1968 with the broad ban on discriminatory practices contained in Title VIII of the Civil Rights Act of 1968[45] and the Supreme Court's reinvigoration of the reconstruction era statute guaranteeing blacks the same rights accorded to whites in acquiring property.[46]

Several years of experience with these enactments has shown, however, that discriminatory practices are not easily abated. Despite the substantial number of cases brought by the Department of Justice, evidence abounds of the continuation of racially restrictive practices by key institutions of the housing industry. White real estate brokers continue to engage in racial "steering" (sending black home seekers to identifiably black neighborhoods and whites to identifiably white areas) and to exclude black real estate brokers from access to listing in white areas.[47] Racial discrimination by landlords and developers in the rental and sale of homes still is widespread even in jurisdictions that have fair housing laws of their own.[48] Data compiled by the Federal agencies that regulate financial institutions show that minority families are denied mortgage loans to purchase homes far more frequently than white families even when they have the same credit standing.[49]

The difficulty of eradicating these practices of discrimination has meant that patterns of racial separation persist even in housing development directly subsidized or assisted by government. For example, during the 1940s, 1950s, and early 1960s, the Federal Government, under various programs, subsidized the construction of large multifamily projects offering rental housing to moderate-income families. Many of these developments were located in the suburbs and, under the policies then prevailing, were made available only to white applicants. In the 1970s surveys conducted by the Department of Housing and Urban Development revealed that, notwithstanding the enactment of fair housing laws, a great many of these developments continue to be occupied predominantly or exclusively by whites.[50]

Moreover, even the newer programs of Federal assistance to low- and moderate-income families enacted contemporaneously with Title VIII have developed racially separate residential patterns. For example, under Section 235 of the Housing and Urban Development Act of 1968, the Federal Government for the first time offered subsidies to enable low-income families to become homeowners. Yet, in large part because of the inertia of the FHA, the program perpetuated the traditional patterns of separate and unequal housing for white and nonwhite families, with many new 235 units in the suburbs being occupied almost exclusively by white and many rehabilitated units in the central city being occupied exclusively by minorities.[51]

Nor have fair housing laws had a significant impact on the racial barriers posed by the exclusionary zoning and land use ordinances that many suburbans communities have adopted. In some cases these laws (for example, minimum lot size requirements) operate to raise the price of housing beyond the reach of low- and moderate-income families and in others (for example, sewer moratoria) the construction of new housing is effectively prohibited entirely. In a few instances the impetus behind the enactment of these restrictive laws has been so blatantly racist that courts have had little difficulty in striking them down.[52] In other cases, a variety cf noninvidious reasons, including environmental and esthetic concerns, are offered for limiting suburban growth and explicit racial motivation is either absent or difficult to establish. Even in these instances, however, the impact of restrictive zoning falls most heavily on racial minorities. As the most recent groups to migrate to cities in large numbers, as the groups which have a disproportionately large share of the most substandard housing, as the groups which have had the least opportunity to own their own homes, they are most adversely affected by laws which restrict the availability of new housing opportunities.

Lastly, it should be noted that while some part of the explanation for racial segregation in housing is economic in character, racial discrimination in both employment and housing is an important factor in the continuing income gap between white and minority families.[53] Over the past two decades while black people have been coming to the cities in large numbers, many industries have been moving their plants to suburbans locations. Where industry remains located in the central city, black workers have found production jobs in the plants to be a significant source of economic opportunity. But relatively few minority workers hold similar jobs in plants located in the suburbs, largely because they are unable to find housing that would give them access to these employment opportunities.[54] Government has failed to act effectively against this form of discrimination; indeed, it has permitted housing discrimination to block employment opportunities for minorities at its own suburban-based installations.[55] Although housing legislation prohibits discrimination and calls for "decent, safe, and fair housing" for all Americans,[56] a stronger statement of national public policy is needed to buttress the affirmative action necessary for integrated housing.

Summary

In 1968 the National Advisory Commission on Civil Disorders capsuled the history of ghetto development with these words:

> What white Americans have never fully understood--but what the Negro can never forget--is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it and white society condones it.[57]

Government at all levels is one of the "white institutions" that has been deeply implicated in the creation, maintenance, and perpetuation of the ghetto. For many years government served as an active partner of the housing industry in a dual effort to develop new housing opportunities for whites in the suburbs while confining blacks and other minorities to the inner city. In recent years the Federal Government has withdrawn from the partnership, but little progress has been made in undoing the patterns of racial separation established over many years. This is exacerbated by the fact that State and local governments have done little to change zoning laws, building codes and similar enactments which frequently impede the development of open housing. In fact, the forces of inertia are so strong that government continues to engage in acts of discrimination even against its established policy.

Accordingly, while various factors help to explain the demographic patterns of large metropolitan areas, the causes of the concentration of black people in the inner city are not "unknown or unknowable." They remain in racially isolated housing and schools because of policies of racial containment, policies to which government has contributed greatly.

Notes to Chapter II

1. Sources: U.S. Department of Health, Education, and Welfare, Office for Civil Rights, May 1976, 122 Cong. Rec., June 18, 1976, pp. S9937-38.

2. Senate Select Committee on Equal Opportunity, Toward Equal Educational Opportunity, 105, 116, Tables 7-5, 7-6 (1972); 118 Cong. Rec. 564-66 (1972). While statistics for the 26 largest cities were last compiled in 1970, few of these systems have undergone significant desegregation since that time, and most now have a higher proportion of minority students. Moreover, it has been estimated recently that three-fourths of all black children in the Nation who attend schools that are more than 80 percent black are in the 100 largest systems. Conversely, it is the smaller districts--those with less than 38,000 enrollment--that account for almost three-fourths of the black children in well integrated schools. Orfield, Gary, Must We Bus, ch. 2. Brookings Institute, forthcoming.

3. U.S. Department of Commerce, Bureau of the Census, Statistical Abstract of the U.S. 1972, 120; Toward Equal Educational Opportunity, supra note 2, at 105, 116.

4. The 1974 enrollment figures show that in the South only one black student in four attends intensely segregated (90-100 percent minority) schools, while about three of every five black students are in schools in the Northeast and Midwest. HEW, Office for Civil Rights, supra note 1, at 9938.

5. Toward Equal Educational Opportunity, supra note 2, at 105, 116.

6. Statistical Abstract, at 21, table 22. An SMSA or "standard metropolitan statistical area" is ordinarily defined as a "county or group of contiguous counties...which contains at least one central city of 50,000 inhabitants or twin cities with a combined population of at least 50,000." Id. at 2.

7. U.S. Department of Commerce, Bureau of the Census, General Social and Economic Characteristics, PC(1) Series.

8. U.S. Department of Health, Education, and Welfare statistics, unpublished, 1974. Note: Due to problems in HEW's data collection procedures, the New York statistics are only a rough estimate.

9. HEW school statistics, unpublished, 1974.

10. Evans v. Buchanan, 393 F. Supp. 428, 433 (D. Del. 1975), aff'd 423 U.S. 963 (1975), reh. den. 423 U.S. 1080 (1976.)

11. This point can also be made graphically in statistical terms. Demographers Karl and Alma Taueber have devised an index for measuring residential segregation and Reynolds Farley has adapted the index to measure school segregation. The Tauebers' index is computed from census block (or tract) data and measures the extent of residential segregation within a particular city or metropolitan area, 0 equaling total integration and 100 equaling total segregation. For example, in a city whose population is 30 percent black an index of 85 would mean that 85 percent of all blacks would have to move from blocks where they now constitute more than 30 percent to blocks that have less than 30 percent black residents to achieve total integration. Adapting this index to reflect school segregation on a metropolitan scale, Farley has shown that for the 52 school districts that make up the close-in Detroit metropolitan area, the black-white elementary pupil segregation index in 1972 was 90. Complete desegregation within each of the 52 districts would lower the index only to 78. Farley, Population Trends and School Segregation in the Detroit Metropolitan Area, 21 Wayne L. Rev. 867, 880 (March, 1975).

12. See, e.g., Milliken v. Bradley, 418 U.S. 717 (1974); Arthur v. Nyquist, Civ. No. 1972-325, Apr. 30, 1976 (W.D.N.Y.); United States v. School District of Omaha, 389 F. Supp. 293 (D. Neb. 1974), 521 F. 2d 530 (8th Cir. 1975), cert. denied 423 U.S. 946 (1975); Morgan v. Hennigan, 379 F. Supp. 410 (D. Mass. 1974), 509 F. 2d 580 (1st Cir. 1974), cert. denied 95 S. Ct. 1950 (1975); Crawford v. Board of Education of City of Los Angeles, 551 P. 2d 28, 130 Cal. Rptr. 724 (1976).

13. Integrated Education, May-June 1975, p. 142.

14. New York Times, May 15, 1975, p. 27, col. 1.

15. U.S. Bureau of the Census, Current Population Reports, Series P-25, No. 555, No. 583, May-June 1975, continuing loss of central city population.

16. The validity of this observation does not depend on whether one agrees with Dr. James Coleman or his numerous critics on the question of whether court-ordered desegregation is an *independent* cause of the flight of whites to the suburbs. For Dr. Coleman has conceded that racial separation is metropolitan areas continues to increase whether or not courts order desegregation of the central city. William Grant, "White Flight Claims Softened," *Detroit Free Press*, Dec. 9, 1975, p. 135.

17. Milliken v. Bradley, 418 U.S. 717, 755 (1974).

18. *Id*. at 756 n.2 (emphasis added).

19. Farley, *Residential Segregation and Its Implications for School Integration*, XXXIX Law and Contemporary Problems, 164, 168-169 (Winter 1975).

20. *Id*.

21. *Id*. at 175-176.

22. *Id*. at 166-167.

23. See, e.g., K. Taeuber and A. Taeuber, *Negroes in Cities: Residential Segregation and Neighborhood Change* (1965), p. 82, and testimony in Bradley v. School Board of Richmond (Transcript, E.D. Va. 1972)(See n. 31 *infra*).

24. Taeuber, *Demographic Perspectives on Housing and School Segregation*, 21 Wayne L.R. 833, 839 (March 1975). A similar index computed for the New York City area shows that the index of dissimilarity for people of Polish stock was 43 in 1960, while the index comparing native whites to blacks was 80. Kantrowitz, *Ethnic and Racial Segregation in New York Metropolis*, 19 (1973).

25. See e.g., Pettigrew, "Attitudes on Race and Housing: A Social Psychological View," *Segregation in Residential Areas* 21, 43-58 (1973).

26. Buchanan v. Warley, 245 U.S. 60 (1917).

27. The city of Birmingham, for example, continued to enforce its racial zoning ordinance until 1949, because, in the words of the president of the city commission, "I believe this matter goes beyond the written law, in the interest of peace and harmony and good will and racial happiness." See City of Birmingham v. Monk, 185 F.2d 859 (5th Cir. 1950); *cert. denied*, 341 U.S. 940 (1951). As late as 1959 such a law was being observed in Palm Beach, Fla. See Holland v. Board of Pub. Instruction, 258 F.2d 730, 731 (5th Cir. 1958). *See also* Greenberg, *Race Relations and American Law*, 276-279 (1959).

28. *See* Spear, *Black Chicago: The Making of a Negro Ghetto*, 1880-1920 (Chicago 1967); Betten and Mohl, "The Evolution of Racism in an Industrial City, 1906-1940," LIX *Journal of Negro History* 51 (January 1974); Katzman, *Before the Ghetto: Black Detroit in the Nineteenth Century* (Urbana 1973); DeGraaf, "The City of Black Angels: Emergence of the Los Angeles Ghetto, 1890-1930," *Pacific Historical Review*, 323 (August 1970); Meyer, Evolution of a Permanent Negro Community in Lansing," LV *Michigan History*, 141 (Summer 1971).

29. Spear, *supra* note 28, at 26.

30. *See* Corrigan v. Buckley, 271 U.S. 323 (1926).

31. The FHA Manual provisions for 1935 and subsequent years are included as exhibits in Bradley v. School Board of Richmond, 338 F. Supp. 67, 215 (E.D. Va. 1972), *rev'd* 462 F.2d 1058 (4th Cir. 1972), *aff'd by an evenly divided Court*, 412 U.S. 92 (1973).

32. *Id*.

33. Shelley v. Kraemer, 334 U.S. 1 (1948).

34. U.S. Commission on Civil Rights, *Housing*, 63 (1961).

35. Among the cases which struck down such policies after 1954 were Detroit Housing Commission v. Lewis, 226 F.2d 180 (6th Cir. 1955); Davis v. St. Louis Housing Authority, (E.D. Mo., Dec. 27, 1955).

36. Gautreaux v. Chicago Housing Authority, 425 U.S. 284 (1976) and Crow V. Brown, 457 F. 2d 788 (5th Cir. 1972).

37. See Record, Bradley v. Milliken, V.2 at 47, V.5 at 78; and Evans v. Buchanan, 393 F. Supp. 428, 434 (D. Del. 1975), *aff'd* 96 S. Ct. 381 (1975).

38. *See* Orfield, "Federal Power, Local Power and Metropolitan Segregation," 89 *Political Science Quarterly*, 777, 787 (Winter 1974).

39. National Commission on Urban Problems, *Building the American City*, 163 (1968); U.S. Commission on Civil Rights, *Housing*, 148 (1961).

40. *Housing*, *supra* note 34, at 148; Abrams, *The City is the Frontier*, ch. 8 (New York 1967).

41. *Housing*, *supra* note 34, at 100; U.S. Commission on Civil Rights, *Equal Opportunity in Suburbia*, 67 (1974).

42. Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907 (N.D. Ill., 1968). Similar site selection practices in Cleveland were found in Banks v. Perk, 341 F. Supp., 1175 (N.D. Ohio 1972), *aff'd in part*, rev'd in part, 473 F.2d 910 (6th Cir. 1973).

43. This was the case in Fulton County, which contains many of the suburbs of Atlanta. *See* Crow v. Brown, 332 F. Supp. 382 (N.D. Ga 1971), *aff'd*, 457 F.2d 788 (5th Cir. 1972). See also, Record, Bradley v. Milliken, V.2 at 77-78; Record, Bradley v. School Board of Richmond, V.2 at 610, 612, 617.

44. See Rainwater, *Behind Ghetto Walls: Black Families in a Federal Slum* (Chicago, 1970). Federal policy was changed in the 1960s to disfavor large highrise developments and promote scatter-site housing, but little public housing has been built since that time.

45. 42 U.S.C. 3601 *et seq*. (1970).

46. Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).

47. See *Equal Opportunity in Suburbia*, *supra* note 40, at 16-27.

48. See *New York Times*, June 28, 1976, pp. 1, 44 for an account of wholesale discrimination in apartment rentals. See, also, *New York Times*, July 7, 1976, p. 33 for an account of the failure of voluntary efforts by Federal and

State officials to cope with discriminatory practices in New York.

49. See Comptroller of the Currency, Survey C (1975), part of a fair housing survey of 105,000 mortgage applications conducted between June 1, 1974, and Nov. 30, 1974. See, also, *Equal Opportunity in Suburbia*, *supra* note 40 at 22.

50. *See e.g.*, Record, Bradley v. School Board of Richmond, V. 2 at 606-615.

51. See U.S., Commission on Civil Rights, *A Report on the Racial and Ethnic Impact of the Section 235 Program*, 89 (1971).

52. United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974), *cert*. *denied* 422 U.S. 1042 (1975). In addition, some suburban jurisdictions have exercised a veto over Federal subsidy programs to prevent the housing that existing zoning permits from being brought within the reach of low- and moderate-income minority families. See Record, Bradley v. School Bd. of Richmond, V.2 at 733-34, 750-51, 799-801.

53. Kain, "Housing Segregation, Negro Employment and Metropolitan Decentralization" 82 *Quarterly Journal of Economics* 175 (May 1968). See also, U.S. Commission on Civil Rights, *Equal Opportunity in Suburbia* (1974) at 11-13.

54. Even in instances where plants are located in close-in suburbs that give minority workers access to jobs, they may have difficulty in securing housing in nearby areas. Some 20,000 black workers are employed in the industrial suburb of Warren, Michigan, but only a handful of black families live there. Record, Bradley v. Milliken, V.2 at 72-78.

55. U.S., Commission on Civil Rights, *Federal Installations and Equal Housing Opportunity* (1970) at 7-14; U.S., Commission on Civil Rights, *Equal Opportunity in Suburbia* (1974) at 47-49.

56. 42 U.S.C. §1441(1970) and 42 U.S.C. §3601(1970).

57. Report of the National Advisory Commission on Civil Disorders, 1 (1968).

III. THE FEASIBILITY OF METROPOLITAN SCHOOL DESEGREGATION

Many observers would concede that the separation of the races between city and suburbs has now reached massive proportions and that government has played a prime role in the containment of minorities within the central city. But they balk at a remedy--metropolitan school desegregation--which appears to pose major difficulties. Among the arguments raised against metropolitan school remedies are that the attendant reorganization of schools would create large administrative and fiscal problems, that metropolitan school districts would be mammoth bureaucracies which would be inefficient and unresponsive to parental and community concerns, that massive busing would be required to accomplish school desegregation.

These are most certainly legitimate concerns, and if they were well grounded metropolitan school desegregation could not be deemed a feasible remedy. But the facts of the matter, as explained below, show that the problems associated with the metropolitan school desegregation remedy are far from insurmountable. Educational structures exist for coping with the fiscal and administrative issues occasioned by school district reorganization. Decentralization of decisionmaking in reorganized districts can avert a loss of local control or parental influence and, indeed, may even furnish parents with opportunities for more participation. Contrary to general belief, the need for busing to accomplish metropolitan desegregation is not extensive when compared with busing for desegregation or other purposes within districts.

Apart from the fact that the negative preconceptions about the metropolitan remedy are incorrect, desegregation on a metropolitan basis offers positive advantages. Such plans are likely to be far more stable and educationally beneficial to children than remedies limited to central city school districts. And metropolitan desegregation remedies are consistent with, and would facilitate, other initiatives that authorities believe are educationally desirable.

There is no other approach that will deal promptly and effectively with racially isolated schools in metropolitan areas. Additional efforts to secure equal housing opportunity are needed and may ultimately bear fruit, but they provide no practical answer for millions of children who now face the prospect of attending schools segregated by government action.

Interdistrict school desegregation remedies are administratively feasible

One objection that has been raised to efforts to achieve school desegregation across district boundaries is that it would pose a difficult series of administrative and fiscal problems. In Milliken v. Bradley, Mr. Justice Burger, writing for the majority, noted that a consolidation of districts within the Detroit metropolitan area for purposes of desegregation "would give rise to an array of problems in financing and operating this new school system," citing such questions as how equality in tax levies would be assured and whether the validity of long-term bonds would be jeopardized.[1]

In the first place, it should be noted that the solution most frequently advanced to achieve school desegregation in metropolitan areas--the establishment of a single district incorporating both the central city and its suburbs--is not an uncommon administrative arrangement for American school systems. In many States, particularly in the South and West, school districts have long been organized on a county basis and such districts frequently are urban counties containing both a central city and its suburbs. Such districts can be very large in land area or in student population. For example, the Clark County system of Nevada, which includes the city of Las Vegas, covers 8,000 square miles.[2] The school systems of Miami-Dade County and Tampa-Hillsborough County in Florida are among the largest in the country,[3] with student enrollments of 241,809[4] and 106,294[5] respectively.

Secondly, however school districts are currently organized, the administrative framework for implementing metropolitan remedies is already available in almost all States within the existing education bureaucracy. In 48 States, significant responsiblity for educational affairs has been centralized within the State boards and departments of education and procedures have been established for the reorganization of local districts through consolidation, annexation or merger.[6]

Such authority does not exist simply on the statute books; the consolidation of school districts to accomplish purposes deemed to be educationally desirable has been a national movement for several decades.[7] In the 40 years between 1932 and 1972, more than 86 percent of the country's school districts have been eliminated through reorganization.[8]

While consolidation activity has been greatest in the small districts outside metropolitan areas,[9] the number of districts in metropolitan areas has also declined dramatically.[10] Nevertheless, a significant number of very small districts still remain in metropolitan areas. As recently as 1971 almost one-third of the districts in metropolitan areas enrolled fewer than 1200 pupils, a size many educators deem to be educationally unsound, and 12 percent have fewer than 300 pupils.[11]

Annexation, a procedure under which land is attached to existing school districts, is similar to consolidation except that it does not involve the creation of a new district. Sometimes the "losing" district remains in existence, albeit with reduced territory. In other cases, the district is completely absorbed by one or more neighboring districts. Annexation, too, has been a procedure commonly employed in metropolitan areas, particularly where by law it is required that school district boundaries be made coterminous with the boundaries of muncipalities.

Most important, the fact that consolidation and annexation are standard procedures means that the administrative and fiscal issues posed by the majority opinion in Milliken are not problems of first impression. In the course of long experience with consolidation and annexation, the States have developed statutory or common law provisions to cope with many of the inevitable dislocations. Procedures have been established for the adjustment of tax rates, equitable redistribution of district debts, transfer of title to school property, teacher reassignments, selection of superintendents, and reconstruction of school boards.[12]

Indeed, the administrative problems posed by a metropolitan remedy have been dealt with in the context of school desegregation. When the Louisville school district, faced with a finding that it had engaged in de jure segregation, decided to accede to a metropolitan remedy, it simply utilized State law and procedures to dissolve itself and become part of the Jefferson County System.[13] Similarly, when a three-judge Federal court decided recently that a metropolitan school desegregation plan was constitutionally required in Wilmington and New Castle County, Delaware, it was able to rely on existing provisions of State law to answer many of the questions posed by the need for consolidation.[14]

Other techniques that have been suggested as means for accomplishing metropolitan school desegregation--the redrawing of district lines or the assignment of children across the boundaries of existing districts--are also well recognized in State law.[15] The latter device has the advantage of leaving district lines undisturbed, but the disadvantage of having a significant number of parents who live and pay taxes in one district while their children attend school in another district, a fact that has led at least one Federal court to prefer consolidation as a desegregation remedy.[16] Notwithstanding this difficulty, the transfer of students to districts other than those of their residence has been used for a variety of purposes.

In Virginia, for example, State policy for a long time encouraged the transfer of students across district lines and even State lines for the purposes of maintaining segregation.[17] In Massachusetts, on the other hand, transfers across district lines have been authorized as a means of advancing State policy against racial imbalance.[18]

Apart from the use of transfers in a racial context, some States have provisions encouraging the use of facilities in neighboring districts for special education[19] or vocational education[20] or, more generally, to cope with inadequate facilities in the sending district.[21] In all of these situations, statutes commonly provide for formal procedures, establish tuition levels or ceilings, and specify the means for payment of tuition.[22]

In short, State laws provide a variety of instruments for restructuring school districts to meet perceived educational needs. While some of these devices may be preferable to others, if school desegregation on a metropolitan basis is constitutionally required or deemed educationally advantageous, the means are at hand to accomplish it.

Interdistrict desegregation remedies need not impair local control over education

A further concern about desegregation remedies that would require the reorganization of school districts in metropolitan areas is that such action would interfere with the exercise of "local control" over the educational process. The Supreme Court in the Milliken case took note of this concern, stating that "[n]o single tradition in public education is more deeply rooted than local control over the operation of schools, local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process."[23]

At the core of the effort to preserve local control is a concern about the ability of citizens to participate in decisions affecting the education of their children. To the extent that the desegregation remedy entails the absorption of local districts in a larger metropolitan unit, it may be thought to impair the ability of parents to participate by making the locus of decisionmaking more remote from them.

But an examination of what is actually involved demonstrates clearly that there is no necessary conflict between the metropolitan school desegregation remedy and the legitimate objectives of local control.

It should be recognized that the quest for a metropolitan remedy for school segregation has been pursued in a wide variety of situations, including both smaller and larger urban areas. In Delaware a consolidation recently ordered by a Federal court to desegregate schools in Wilmington (which is 85 percent black in student enrollment) and northern New Castle County (which is more than 90 percent white)[24] will create a school system covering 251 square miles[25] and enrolling about 80,000 students.[26] The new district will still be quite small compared to many other school systems in the Nation.

In larger urban areas, of course, a consolidation of districts would result in very sizeable school systems. But even in these areas, a metropolitan plan for purposes of school desegregation need not threaten local decisonmaking powers. The prime responsibility of a metropolitan authority so established would be to assign students to schools in a nondiscriminatory manner; there would be no necessity to centralize authority over other aspects of the educational process.[27]

Indeed, quite independent of the issue of segregation, very large school districts in the Nation have recognized a need for decentralized administration. In the New York City system, for example, community subdistricts have been established with locally elected boards which have broad authority to hire faculty and administrative personnel, to make decisions about curriculum and the allocation of budget.[28]

In Richmond, Virginia, a plan for metropolitan desegregation prepared by the city school board and accepted by the district judge followed this model of decentralized administration.[29] The plan would have divided the newly consolidated district into six subdivisions consisting of 9,000 to 20,000 students each.

In short, if States and localities wish, there is nothing inherent in the concept of metropolitan school desegregation to prevent them from devising administrative structures which will maximize parental participation in school affairs.[30] Nor does a metropolitan remedy jeopardize the prerogatives of States or local governments to experiment at the local level or to tailor educational programs to local needs.[31]

In fact, a metropolitan remedy can actually enhance the opportunities for locally initiated innovation.[32] The only constraint on such efforts would be that they not undermine desegregation.

Interdistrict desegregation remedies would not require excessive busing

The most vocal objections to school desegregation plans, whether of the intra- or interdistrict variety, usually concern busing. It is frequently assumed that if desegregation were to be undertaken on a metropolitan basis, it would entail busing requirements that would be far more burdensome than those that exist within a district (whether for desegregation or other purposes). This assumption is incorrect.

This Commission has sought in other reports to deal with the mythology that surrounds busing. It has been documented that a very large proportion of public school children in the country use buses to get to school[33] and only a small percentage of the busing is for purposes of desegregation,[34] that busing is the safest means for getting children to school,[35] and that the costs of transportation, whether for school desegregation or for other purposes, constitute a very small portion of the budgets of almost all school districts.[36]

Further, it has been noted that when busing is undertaken for purposes of desegregation, the added travel time for students is usually very small. In a 1972 survey of 11 cities which desegregated their schools with the aid of busing, the average trip increased by more than 15 minutes in only two; in six, the average travel time remained the same.[37] In many communities which prior to a court order had used busing to maintain segregated schools, desegregation actually decreased travel time.[38]

It has been clear from the moment the Supreme Court validated busing as an instrument for desegregation that the Court will place prudent limitations on the use of busing in order to protect the interests of school children. Thus, in _Swann_ v. _School Board of Charlotte-Mecklenburg_, the Court said that student transportation cannot be "so great as to risk either the health of the children or to infringe significantly on the educational process."[39]

Most important in the context of this discussion, all of the evidence available suggests that the busing required to desegregate on a metropolitan basis would not be excessive. An idea of what transportation needs are involved in metropolitan desegregation can be gleaned from plans already in operation in places that are metropolitan in character but where no district lines separates city from suburbs.

In Charlotte-Mecklenburg County, North Carolina, a school district of 550 square miles enrolling 84,000 students, the desegregation plan approved by the Supreme Court involved a maximum travel time of 35 minutes. This was an improvement over the situation that prevailed prior to the desegregation plan, under which children were transported an average of 15 miles one way for an average trip of *more than 1 hour*.[40]

Clark County, Nevada, which includes the city of Las Vegas, is one of the larger school districts in the Nation; its land area of 8,000 square miles makes it as large as Connecticut, Rhode Island, and Delaware combined. When the district desegregated pursuant to court order in 1972 busing was required for some 6,000 additional children in a school population of 75,000. Yet the average travel time was only 30 minutes for a ride that averaged 11 miles.[41]

Similarly, metropolitan desegregation plans that were prepared for Richmond, Virginia, and Detroit, Michigan (but which did not go into effect because appellate courts ruled there was no legal basis for requiring a metropolitan plan) indicated that busing requirements would not be excessive even in more populous districts. In Richmond the consolidated metropolitan district would have enrolled 104,000 children, 78,000 of whom were already being bused in the three separate systems that made up the metropolitan area. Desegregation under the plan prepared by school authorities, would have required the transportation of only 8,000 to 10,000 more children. The maximum busing time, affecting only a small number of children, was to be 45 minutes to 1 hour, which conformed with State standards. In fact, in some of the more rural or isolated parts of the metropolitan area, students had been travelling more than an hour to get to school.[42]

Perhaps the greatest logistical challenge was faced in Detroit, the fifth largest school system in the Nation in student enrollment. Yet the plan proposed to desegregate a significant portion of the Detroit metropolitan area would have imposed a ceiling on bus trips of 40 minutes, with many of the rides as short as 15 to 20 minutes.[43] These travel times may be compared with those of suburban and rural Michigan districts where one-way trips of one hour are routine, one and one-half hour rides are "too common," and a few districts have trips in excess even of one and one-half hours.[44]

The reason why metropolitan school desegregation plans appear to entail relatively modest busing requirements is that city-suburb boundary lines frequently separate schools that are drastically different in racial character but that are geographically close together. In Richmond, for example, most central city schools located close to the district line were predominantly black in enrollment, while most suburban schools near the district line were virtually all white. If assignment of children across district lines had been mandated, desegregation would not have posed major, logistical problems. Indeed, in some cases, the need for busing to accomplish interdistrict desegregation may be far less than what would be required to desegregate *within* the district.

In Hartford, Connecticut, all schools with minority enrollments of 90 to 100 percent are located in the northern end of the city where no predominantly white schools are situated. The pairing of these schools with nearby white schools in adjacent suburban communities would be logistically simpler than busing students across Hartford's large commercial and industrial center to other city schools.[45] Additionally, since suburban jurisdictions tend to bus more than cities, they maintain an inventory of buses that can make interdistrict plans more economical.[46]

Accordingly, in some circumstances interdistrict desegregation plans may actually involve less travel time and distance and fewer transportation costs than intradistrict plans.

Interdistrict plans offer the prospect of stable integration

In recent months, scholars have debated, often with some heat, the question of whether the desegregation of schools in large cities with substantial minority populations tends to be self-defeating. Some have suggested that school desegregation in such circumstances stimulates the fears of white parents and accelerates the ongoing movement of whites from cities to suburbs.[47] Others have pointed out that "white flight" to the suburbs does not differ markedly in urban areas that have undergone school desegregation and those that have not.[48]

No one, however, appears to dispute the view that, given a continuation of current migration trends in many metropolitan areas, central city schools will become increasingly black and Hispanic in their enrollment, whether or not they are required to be desegregated. Yet, unless metropolitan remedies are available, many courts will have no choice but to require desegregation of central city schools, even though they recognize that the intracity remedy is not likely to remain stable. This is so because in an increasing number of large cities, it has been demonstrated that public schools have been segregated as a result of deliberate policies of local officials.[49]

In contrast, where school desegregation remedies have been implemented on a metropolitan basis they have proved to be quite stable. Charlotte-Mecklenburg, North Carolina, Tampa-Hillsborough and other Florida counties, and Nashville-Davidson County, Tennessee, are all cases where courts have ordered school desegregation to be carried out on a metropolitan basis. All of these districts experienced some loss of white children to private schools during the initial years of desegregation. Yet, in each situation, the trend toward withdrawal abated, white children began to return to the public schools, and after several years desegregation was largely accepted.[50] Even those who have been critical of school desegregation as leading to white flight have conceded that their data show that metropolitan plans such as Tampa-Hillsborough have proved stable.[51]

Metropolitan desegregation remedies maximize prospects for education gains

The apparent stability of metropolitan remedies in part is attributable to the fact that such remedies take place on terms that most parents perceive as not educationally disadvantageous.

Increasingly, the boundaries that exist between cities and suburbs divide people not only by race but by economic status. Census data compiled in 1970 show that in metropolitan areas the proportion of households with annual incomes of $3,000 or less is 40 percent greater for central cities than for suburbs. In contrast, the proportions of households earning more than $10,000 per year is 20 percent greater in the suburbs than in the central city.[52] Accordingly, central city public schools often enroll very large percentages of children from low-income households.[53] When desegregation takes place within the central city alone, it frequently means bringing together in the same schools the children of low-income white families and low-income minority families.

In contrast, metropolitan desegregation plans tend to result in schools that are integrated as to income and economic status as well as race. In Charlotte-Mecklenburg, the plan approved contemplated that each school within the metropolitan district would roughly reflect the racial make-up of the district as a whole, which was 71 percent white and 29 percent black. The racial composition of the schools ranged from 9 percent black to 38 percent.[54] While socioeconomic desegregation was not an explicit aim of the plan, remedies such as that adopted in Charlotte-Mecklenburg inevitably mean that the great majority of schools have enrollments consisting predominantly of advantaged children. Such schools are viewed by parents in far more positive terms than those whose enrollments are dominated by lower-income students.[55]

The view of parents that schools consisting largely of advantaged students provide the most desirable learning environment is strongly supported by social science evidence. The most comprehensive study of the subject ever done, the 1966 HEW project conducted by Dr. James Coleman and his associates, concluded that the socioeconomic character of the student body is the most important school factor influencing educational outcomes, that children from disadvantaged backgrounds tend to do best in schools consisting of a majority of advantaged students, and that advantaged students do not suffer from the presence of lower-income children in the classroom.[56] These findings have been confirmed by numerous studies and reanalyses of the data conducted over the past decade.[57]

Further reinforcement for the view that desegregation on a metropolitan scale can be educationally advantageous comes from the results of several voluntary programs for enrolling inner city children in suburban schools. Such programs have been conducted in Boston; several cities in Connecticut; Rochester, New York; and Washington, D.C. While the numbers of children involved have been relatively small (ranging from 616[58] children enrolled in the Rochester program to 2,964[59] in Boston's METCO project) and busing is usually only one-way, the results have been uniformly positive. The programs have achieved a high degree of acceptance, and over the course of time, achievement gains for minority children have been noted in several places.[60] Less measurable, but perhaps more important, gains have been reported that are attributable to "noncognitive" factors, e.g., stronger incentives for minority children to continue their education when they are enrolled in schools in which high educational achievement is the norm. Thus, even a strong critic of desegregation efforts has conceded that students who were bused in Boston's METCO project tended to enroll in higher quality colleges and universities, noting that there was strong evidence that suburban schools exercise a "channeling" effect because they afford black children special contacts that are not available in central city schools.[61]

Metropolitan desegregation plans offer educational advantages beyond those of desegregation

In addition to the fact that interdistrict plans are likely to be more stable and educationally advantageous to all children than those limited to central cities, there are other educational gains that may be realized by reorganizing education in metropolitan areas.

The drive for consolidation of school districts over the past 40 years has been actuated by a belief that reorganization of school districts into larger units can provide more efficient and economical education, and authorities believe that continued efforts to this direction are needed.[62]

In the view of some authorities, such efforts are specifically needed in metropolitan areas, where school districts often are extremely unequal in size and overlap the lines of political jurisdictions.[63] One effect of consolidation for purposes of desegregation would be to eliminate a number of fiscal inequities that exist among districts within a given metropolitan area. As educators have recognized a need for more individualized treatment of children, they have sought to establish special education programs to meet the needs of the gifted and handicapped, to provide a broader range of counseling services, and to respond to demands for increasingly sophisticated training for careers and vocations. Individual school districts, unless they are extremely large, lack the resources to meet many of these needs; efficiency, economies of scale, and the scarcity of specially trained personnel require that the services be centralized and draw students from a number of districts. Similarly, efficiency in training teachers, improving administrative services, and in using computers and other expensive equipment as instructional tools also points toward centralized or cooperative efforts.

It is possible, of course, for suburbs to meet some of these needs through cooperative arrangements among themselves without involving central cities, and New York State has established a system of special instructional services--called Boards of Cooperative Educational Services (BOCES)[64]--that does just that. The New York law provides financial incentives to suburbs to participate in BOCES but excludes the five largest cities in the State--New York City, Buffalo, Rochester, Syracuse, and Yonkers. In the judgment of the Fleischmann Commission, the program has proved a success but might provide even greater economies of scale if central cities were allowed to participate.[65]

Whether or not such programs can work well for suburban students without the involvement of central cities, certainly metropolitan desegregation is consistent with the efforts to meet other educational needs on a metropolitan basis. And, as the Fleishmann Commission noted, "one of the greatest benefits of adding the large cities to the BOCES system would be the mitigation of social class and racial separation that has arisen through the development of suburbs and inner city housing patterns."[66]

Equal housing opportunity is not an immediate feasible alternative to metropolitan school remedies

Even if interdistrict school desegregation remedies are logistically and administratively feasible, do not interfere with legitimate goals or local control and parental participation, promise effective desegregation, and offer other educational advantages, some would urge that they not be undertaken if other feasible alternatives are available to deal with racial separation. The principal alternative that has been offered is the desegregation of housing. After all, it has been asked, if government participation in discriminatory housing policies has been the major cause of continued racial containment, should not the remedy lie in corrective housing measures? Such measures, it may be supposed, would bring about integrated public schools without the need for extensive busing.

The difficulty with any suggestion that sole reliance be placed on fair housing policies as a cure for school segregation is that at best the remedy would come far too late to benefit children who will be attending school during the 20th century.

Eight years of experience with Title VIII of the Civil Rights Act of 1968 and other fair housing measures has demonstrated the persistence of discriminatory practices in the housing industry and how slow progress has been in eliminating them. Indeed, in metropolitan areas where white migration from central cities to suburbs has continued to be at a high level, housing segregation in metropolitan areas has actually grown worse in recent years.

Even if government efforts at fair housing enforcement were stepped up, most experts believe that it would be several generations before racially desegregated residental patterns could become the rule rather than the exception.[67] Unlike public schools which are wholly governmental institutions, in housing government shares decisionmaking with a highly fragmented housing industry, including lending institutions, real estate brokers, and many thousands of small developers. Even during the period from 1968 to 1972 when government took a stronger hand by providing significant incentives to the construction of housing for low- and moderate-income families, the gains in eradicating racial segregation were small. Should such a program be reinstituted, new barriers would be faced, including the skyrocketing costs which raised the median price of new housing to $41,000 in 1974 and placed such homes beyond the reach of two of every three American families.

Efforts to break up the patterns of residential containment that have confined minorities to central city ghettos may well be an important adjunct to more direct methods for dealing with racial segregation in the public schools of metropolitan areas. But standing alone, housing measures cannot provide a remedy for the rights of children to be free from governmentally imposed discrimination in their public education, rights which the courts have held to be "personal and present."[68]

Notes to Chapter III

1. Milliken v. Bradley, 418 U.S. 717, 743 (1974).

2. U.S. Commission on Civil Rights, School Desegregation in Ten Communities (1973), at 198.

3. Id. at 14.

4. U.S. Department of Health, Education, and Welfare, Office for Civil Rights, Directory of Public Elementary and Secondary Schools in Selected Districts (1972), at 234.

5. School Desegregation in Ten Communities, supra note 2 at 14.

6. C.O. Fitzwater, State School System Development: Patterns and Trends, 45 (1968). Illinois and Wisconsin are the two exceptions.

7. Massachusetts authorized consolidation in 1838. Connecticut established the first consolidated district in 1839. P. Smith, Pupil Transportation: A Brief History, Inequality in Educ. 6, 10 (1972). Between 1882 and 1909, all the New England States abolished their small districts and replaced them with town (township) districts. Fitzwater, supra note 6, at 23. The process of consolidation has never stopped. Redistricting has been widespread. Since 1945 only six States (Florida, Hawaii, Louisiana, Maryland, Utah, and West Virginia) have not made changes in their organization of school districts. Six other States (Alabama, Connecticut, Massachusetts, New Jersey, Rhode Island, and Virginia) had more school districts in the fall of 1966 than they had in 1945... [T]he remaining 38 States all had reductions: 26 States reduced their numbers of districts by more than one-half, 18 by more than three-fourths, and six by more than 90 percent. Id. at 11. The States making no changes already had exceptionally few districts. Bureau of the Census, U.S. Dept. of Commerce, 1972 Census of Governments, Public School Systems in 1971-72, at 4, 7, table 1, (1972) (hereafter cited as Public School Systems in 1971-72].

8. In 1931-32 there were 127,531 school districts in the United States. Thirty years later, in 1962, there were only

33,086 districts. U.S. Office of Educ., Nat'l Center for Educ. Statistics, Dept. of Health, Educ. and Welfare, Statistics of State School Systems, 1967-1968, at 22, table 5 (1970). By 1971-72 there were only 16,771 operating school systems in the United States. National Center for Educational Statistics, U.S. Dept. of Health, Educ. and Welfare, Education Directory 1971-72, Public School Systems in 1971-72, xii, Table 1 (1972).

9. Public School Systems in 1971-72, supra note 7, at 3-4.

10. There were 6,604 school districts in the 212 SMSAs in 1962. U.S. Commission on Civil Rights, Racial Isolation in the Public Schools 17, vol. 1 (1968). By 1972 there were 4,390 districts in SMSAs, a decline of over 33 percent in 10 years. Public School Systems in 1971-72, supra note 7, at 2. The decline in sharper than even those figures show, for at the same time there was an increase in the number and size of metropolitan areas (SMSAs).

11. Public School Systems in 1971-72, supra note 7, at 2. Methods used to reduce the numbers of districts through consolidation vary. In some States, the legislature simply has exercised its power to redraw boundaries and enacted a statewide reorganization of the educational system. In others, States have delegated consolidation authority to State or county education agencies, sometimes subject to approval by a local referendum. For a discussion of consolidation techniques, see Office of Education, U.S. Dept. of Health, Educ. and Welfare, Organizing Districts for Better Schools (Bulletin 1958, No. 9).

12. See, e.g., Cal. Educ. Code §1601 et seq. (West 1969); Ill. Code Ann. Stat. ch. 122, §71 et seq. (1962); Ind. Ann. Stat. §§23-3101 et seq. (1970). Mr. Justice Marshall joined by three of his colleagues, noted in dissent in Milliken that procedures existed under Michigan law for dealing with the administrative problems that a metropolitan remedy would entail. Milliken v. Bradley, supra note 1, at 783.

13. Board of Education of Louisville, Ky. v. Board of Education of Jefferson County, Ky., 522 S.W.2d (Ky. Ct. App. 1975). Financial considerations were in large part responsible for the decision to try a metropolitan remedy. See Doyle, Marie T. The Public School Merger Issue in Jefferson County, Kentucky." Ph. D. dissertation, University of Kentucky, 1974, p. 91. See also, for general discussion

of the merger, U.S. Commission on Civil Rights, staff report, "School Desegregation in Louisville and Jefferson County," June 1976, at pp. 44-55.

14. Evans v. Buchanan, sub nom. New-Castle-Gunnings Bedford Sch. Dist. v. Evans (D. Del., May 19, 1976) mimeo op. pp.66-67. This case and companion cases were appealed directly to the Supreme Court in September and October 1976. However, on Nov. 30, 1976, the appeals were dismissed. 45 U.S.L.W. 3394. Appeals are currently pending in the third circuit court of appeals (C.A. Nos. 76-2101-2108).

15. See, e.g., Ga. Code Ann., tit. 32 §650 (1969) (transfer subject to rules of State Bd. of Educ. and approval of receiving district) (former §938 required approval of both districts); Mich. Comp. Laws Ann. §430.24 (primary school districts authorized to close schools and arrange for education in another district); §340.582 (receiving district has discretion to admit; tuition and transportation expenses); §340.761 (district not having a high school obliged to pay tuition and transportation expenses of pupils attending high school in another district); §340.763 (districts without high schools permitted to pay tuition and transportation to high schools in adjoining states) (1967), as amended, (Supp. 1974); Neb. Rev. Stat. §§79-494 -- 79-4106.05 (1971) (provisions for nonresident high school education for Nebraska pupils in Nebraska districts and in neighboring states); N.C. Gen. Stat. §115-176 (1966) (school districts can, by joint agreement, require the attendance of pupils, individually or en masse, at school outside the district of the students' residence); In re Varner, 266 N.C. 409, 146 S.E. 2d 401 (1966); In re Hayes, 261 N.C. 616, 135 S.E. 2d 645 (1964).

16. Evans v. Buchanan, supra note 14, at 37. The court noted that a transfer plan would "make it much more difficult for individual parents to require accountability from teachers and administrators who are employed by districts other than that of their voting residence." Courts have not been troubled by the split between voting residence and school attendance in circumstances where it was expected to be only an interim arrangement. For example, a Georgia court justified taxing Atlantans to support county schools they had no present right to attend on grounds that the schools would soon be a part of the Atlanta district through annexation. McLenna v. Aldridge, 233 Ga. 879, 887, 889, 159 S.E. 2d 682, 688, 689 (1966)

(dictum). In Memphis, Tenn., public officials raised no objection to a school desegregation plan that exchanged students between a city school and a county school expected to be annexed by the city district. Robinson v. Shelby County Bd. of Educ., 467 F. 2d 1187, 1195 (6th Cir. 1972) (McCree, J. dissenting).

17. Bradley v. School Bd. of City of Richmond, 338 F. Supp. 67, 159-61 (E.D. Va. 1972). A similar practice formerly occurred in areas of Indiana. *See*, Martin v. Evansville-Vanderburgh School Corp., 347 F. Supp. 816 (S.D. Ind. 1972) (enforced transfers and transportation to distant district to attend black school).

18. Mass. Gen. Laws Ann. ch. 76, §§12A, 12B (1969).

19. *See, e.g.*, Mass. General Laws Ann. ch. 71B, §4 (Supp. 1972); Mich. Comp. Laws Ann. §340.771a (Supp. 1974-75).

20. *See, e.g..*, Mass. General Laws Ann. ch. 74, §7 (1969); Mich. Comp. Laws Ann. §§340.330-.330u (Supp. 1974-75).

21. *See*, Mich. Comp. Laws Ann. §§340.24, 761, .763 (1968), *as amended*, (Supp. 1974-75).

22. *See*, e.g., Cal. Educ. Code §10801 (West 1969); Ill. Ann. Stet. ch. 122, §29-6 (Smith-Hurd 1961); Ohio Rev. Code Ann. §3327.04 (Page 1972).

23. Milliken v. Bradley, *supra* note 1, at 741-742.

24. Evans v. Buchanan, *supra* note 14, at 6.

25. Id. at 4.

26. *Id*. at 5.

27. In carrying out reorganization in the past, several States have recognized that the new units created need not assume all functions. Thus, for example, some states have established intermediate school districts whose functions are to provide centralized services for local districts with limited financial ability or low pupil enrollment. Fitzwater, *supra* note 6, at 36.

28. N.Y. Ed. Law §2590 et seq (McKinney 1968).

29. Bradley v. School Board of Richmond, *supra* note 17, at 186.

30. Metropolitan school desegregation is compatible with administrative decentralization. *See* Gittel, "The Political Implications of Milliken v. Bradley," in U.S. Commission on Civil Rights, *Milliken v. Bradley: The Implications of Metropolitan Desegregation* (1974), at 43-4; Milstein and Cole, *A Federated Metropolitan Education Plan*, Education and Urban Society (Aug. 1970); Foster, *Desegregating Urban Schools: A Review of Techniques,* 43 Harv. Educ. Rev. 5, 35 (1973); Dimond, *Reform of the Government of Education: A Resolution of the Conflict Between Integration and Community Control*, 16 Wayne L. Rev. 1005 (1970), at 119 ff-.

31. In Milliken, the Court observed that "local control over the educational process affords citizens an opportunity to participate in decisionmaking, permits the structuring of school programs to fit local needs, and encourages 'experimentation, innovation and a healthy competition for educational excellence.'" Milliken v. Bradley, *supra* note 1, at 742, citing San Antonio School District v. Rodrigues, 411 U.S. 1,50 (1973). It is true that consolidation would likely entail a uniform system for financing the reorganized school system. But currently in many States citizens cannot exercise much control over expenditures at the local level. Because of the wide variation in property tax bases from district to district, there is no direct correlation between tax effort and revenues produced, and in many districts a high level of tax effort does not assure that the the level of educational expenditures will be competitive with other districts. See, Coons, Clune, and Sugarman, *Private Wealth and Public Education* (1970), at 201-242. Accordingly, if metropolitan remedy brought a reorganization of the tax base, local control might actually be enhanced.

32. Desegregation has increased parental participation in some districts. New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education, *The Fleischmann Report* (1972), at vol. I, p. 230; and Taylor, "The Legal Battle for Metropolitanism," 81 U.Chi.L.Rev. 331,341(1973).

33. The latest available estimate is 50.2 percent for the 1974-75 school year. National Institute of Education, U.S. Dept. of Health, Educ., and Welfare, *Statistics on Selected Desegregation Issues* (1975).

34. *Id.* In terms of the total student population, it is estimated that 3.5 percent of all students who would not otherwise be bused are bused for desegregation purposes. *Id*. There are no data available to indicate what percentage of this busing is pursuant to court order.

35. National Highway Traffic Safety Administration, *Pupil Transportation Safety Program Plan*, S.4682, 93d Cong., 2d Sess. (1974).

36. In 1974-75, expenditures for pupil transportation constituted 3.3 percent of educational cost. *Statistics on Selected Desegregation Issues*, *supra*, note 33.

37. U.S. Commission on Civil Rights, *Your Child and Busing*, 8 (1972).

38. Ninety percent of the 300 desegregation plans for Southern districts that were approved by the U.S. Dept. of Health, Educ., and Welfare in 1969 showed decreases in total district busing. *Metropolitan Applied Research Center Fact Book on Pupil Transportation*, 29 (MARC Document No. 2, 1972), *quoting* Janson, "School Busing a U.S. Tradition," *N.Y. Times*, May 24, 1970, at 49. In the northern industrial city of Pontiac, Mich., court-ordered desegregation increased the number of children bused but the average time and distance of bus trips were less after desegregation than before it. *School Desegregation in Ten Communities*, *supra* note 2 at 44.

39. 402 U.S. 1, 30-31 (1971).

40. Swann, *supra* note 39, at 30.

41. Orfield, *School Desegregation and Urban Society* (1976)Ch. VI, p. 37.

42. Bradley v. School Board of Richmond, *supra* note 17, at 188.

43. Bradley v. Milliken, *supra* note 1. 345 F. Supp., at 925-28. The plan included 54 of the 86 districts in the metropolitan area, and 780,000 students, of whom 197 (25.3 percent) were black. *Id*. at 925. Of the total number of students, approximately 310,000 (or 40 percent) would have been transported by bus; prior to the desegregation order,

more than 300,000 students within the Detroit tri-county area were already being transported to school. *Id*. at 929.

44. *Id*. at 914, 926; Hain, *The Law of Desegregation*, 18 Mich. School Board J. 22, 31 (December 1971).

45. Taylor, *Metropolitan-Wide Desegregation*, Inequality in Education, 45, 47-48, no. 11 (March 1972).

46. Thus, in Milliken v. Bradley a Detroit-only plan would have required the purchased of 900 new buses while a metropolitan plan would have necessitated buying only 350. 414 U.S. at 813-14 (1974) (Marshall, J. dissenting).

47. Coleman, *School Desegregation and Loss of Whites from Large Central-City School Districts*, unpublished article, at 31-32.

48. Farley, "School Integration and White Flight," in *Symposium on School Desegregation and White Flight* (1975), at 11; Orfield, "White Flight Research, Its Importance, Perplexities and Possible Policy Implications," in *Symposium*, at 44. For a review of the controversy, see Pettigrew and Green, "School Desegregation in Large Cities: A Critique of the Coleman's 'White Flight' Thesis," 19 Harv. Ed. Rev. 1 (Feb. 1976).

49. Denver, Keyes v. School District No. 1, 303 F. Supp. 279 (D. Colo. 1969); Detroit, Bradley v. Milliken, 338 F. Supp. 582, (E.D. Mich. 1971); Buffalo, Arthur v. Nyquist, F. Supp. Civ-1972-325 (W.D.N.Y. Apr. 30, 1976); Boston, Morgan v. Hennigan, 379F. Supp. 410 (D. Mass. 1974).

50. Giles, Cataldo, and Gatlin, "Desegregation and the Private School Alternative," in *Symposium on School Desegregation and White Flight*, 22 ff (CNPR 1975); *School Desegregation in Ten Communities*, *supra* note 4, at 14-35, 90-109.

51. Coleman, "Liberty and Equality in School Desegregation," in *Social Policy* (1976), at 12.

52. Advisory Commission on Intergovernmental Relations, *Regional Decision Making: New Strategies for Substate Districts*, 7 (1973). More than 30 percent of suburban housing is owner-occupied and is valued at more than

$25,000. Only 20 percent of central city housing is so classified. Id.

53. Those percentages are often greater in the public schools than in the city as a whole because large numbers of children from affluent families are often enrolled in private schools.

54. Swann, supra note 39, at 9.

55. Some parents, of coures, may see the issue largely in racial rather than class terms, reacting negatively to schools that are more than a certain percentage black in their enrollments. See Giles, Cataldo, and Gatlin, supra note 50.

56. U.S. Department of Health, Education and Welfare, Equality of Educational Opportunity (1966).

57. See, e.g., U.S. Commission on Civil Rights, Racial Isolation in the Public Schools (1967); On Equality of Educational Opportunity, Mosteller and Moynihan, eds. (1972). Whether or not the racial composition of schools is an independent factor influencing educational outcomes is a moot point since socioeconomic integration cannot be provided for large numbers of minority children without providing racial integration.

58. Supra note 32, at 269, vol. I.

59. Telephone interview with Marcus Mitchell, public relations director, Project METCO, Aug. 3, 1976. Mitchell specified that this figure includes only Boston students in the program and does not include METCO students from Framington, Mass. METCO does not expect to increase its enrollment next year because of a cutback in state funds.

60. Cheshire Public Schools, Conn., Project Concern in Cheshire, a Preliminary Report (1970); Mahan and Maham, "Changes in Cognitive Style: An Analysis of the Impact of White Suburban Schools on Inner City Children," paper presented at the Annual Convention of the American Psychological Association (77th, Washington, D.C., Sept. 1969).

61. Armor, "The Evidence on Busing," Public Interest, 90, 105-106 (1972). Armor claims, however that the dropout rate

for black graduates is higher than the dropout rate for black graduates of black high schools, so that the enrollment rate at the end of the sophomore year of college is about the same for the two groups. Bused students usually attended higher quality post-secondary institutions, though. Id. Armor's study has been severely criticized. Critics contend that "the 84 percent college (retention rate) of the 1970 METRO graduates who entered the second year of the 4-year colleges is not abnormally low. In fact, it is slightly above the 78 percent national retention rate for white students in 4-year colleges." Pettigrew, Ussem, and Normand, "Busing: A Review of the 'Evidence,'" Public Interest, 88, 111.

62. Fitzwater, supra note 6, at 11-18; S. J. Knezevich, Administration of Public Education 129-32 (2d ed. 1969); Educational Research Services, ERS Information Aid 21 (No. 8, June 1971). The Committee on Educational Policy of the National Academy of Education has suggested that the total number of operating school districts in the nation should be 5,000 or less. Nat'l Academy of Educ., Comm. on Educational Policy, Policy Making for American Public Schools (For House Comm. on Education and Labor, 1969), cited in Educational Research Services ERS Information Aid, 21 (No. 8, June 1971).

63. See, e.g., Havighurst, ed. Metropolitanism: Its Challenge in Education (Univ. of Chicago, 1968); Havighurst and Levine, eds., The Sixty-Seventy Yearbook of the National Society for the Study of Education, Part I (1968); Education in Metropolitan Areas (Allyn and Bacon, 1971).

64. The Fleischmann Report, supra note 32, at V. III, 33ff.

65. Id. at 37.

66. See discussion, supra, ch. II.

67. Bradley v. Richmond, supra note 17, at 217-218; and Orfield, School Desegregation and Urban Society, supra note 41, ch. III, p. 7 ff.

68. See Sipuel v. Oklahoma State Regents, 332 U.S. 631, 633 (1968); Alexander v. Holmes, 396U.S.1218 at 1220 (1969); Green v. County School Board of New Kent County, 391 U.S.430, at 442 (1968).

IV. LEGAL PRINCIPLES GOVERNING INTERDISTRICT REMEDY

The issues surrounding the racial segregation of public schools in metropolitan areas may be viewed as the last major legal frontier to be crossed in the long judicial effort to make equal educational opportunity under the 14th amendment a living reality.

Many of the legal principles established in Brown v. Board of Education and its progeny--that it is the responsibility of the State to provide equal educational opportunity to all its citizens, that the Constitution prohibits not merely segregation laws in the South, but segregative policies wherever they occur, that the test of a desegregation remedy is whether it is effective--point toward the recognition of metropolitan desegregation as a legally mandated remedy to cure State-imposed segregation in cities and suburbs. Yet in Milliken v. Bradley, its first opinion on the issue, a closely divided Supreme Court rejected a metropolitan remedy for segregation in the city of Detroit, holding that the existence of a violation of the Constitution was an insufficient basis for metropolitan redress unless it could be established that the violation had a significant impact beyond the district in which it took place.

Cases decided since Milliken have been uniformly favorable to metropolitan school desegregation remedies, indicating that the stringent test for such a remedy imposed in Milliken can be met. But most of these decisions rest on factual situations specific to the communities in which the cases were brought and the decisions, even if sustained by the Supreme Court, would not lead immediately to widespread desegregation. Indeed, the most serious barrier to a solution to school segregation in metropolitan areas may be the "perceived public mood," which one Supreme Court Justice believed was the stumbling block in Milliken.

These kinds of barriers prevented school desegregation in the rural South from becoming a reality until Congress and the executive branch gave support to the Federal courts. Similarly, school desegregation in metropolitan areas may depend as much on the initiatives of Congress, the President, and State educational and political authorities as upon the Federal courts.

Legal Background

Abandoning the "separate but equal"[1] doctrine as it had been applied to public schools, the Supreme Court in *Brown* v. *Board of Education*[2] ruled that State and local laws compelling or authorizing black students to be educated separately from white students were unconstitutional. The Court found that such laws caused a denial of the "equal protection of the laws" demanded by the 14th amendment. Until the recent decisions in *Keyes* v. *School District No. 1*,[3] *Milliken* v. *Bradley*,[4] and *Pasadena* v. *Spangler*[5] all Supreme Court decisions after *Brown* had involved schools once segregated by explicit State laws. In those earlier Southern cases, the major concern of the Court was the formidable task of compelling school officials to dismantle their "dual"--or segregated--school systems. The critical legal issue was what actions by school authorities amounted to compliance with *Brown's* decree outlawing *de jure* school segregation.

With time, the constitutional obligations of school officials to eliminate school segregation have become clear:

> School boards...operating State-compelled dual systems [are] charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination [is] eliminated root and branch.
>
> ...The burden on a school board today is to come forward with a [desegregation] plan that promises realistically to work and promises realistically to work now.[6]

School districts, therefore, must do more than discontinue using discriminatory student and faculty assignment practices. They must act affirmatvely to eliminate the present effects of past discriminatory actions--to end what the Court has termed the "vestiges" of dual school systems--and seek to establish a "unitary" school system in which there are not white schools or black schools, "but just schools."[7] A desegregation plan passes constitutional muster only if it is "effective" and makes "every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation."[8] Such plans must "work" not only to eradicate separate schools but to guard against resegregation.[9]

Because these principles were developed in cases where State law had explicity required a segregated school system, the constitutional violation--the operation of a dual school system mandated by State law--was always a given element. The issue before the Court in these cases was not whether the Constitution had been violated, but what the responsibilities of the offending school authorities were to remedy the violation.

Outside this classic Southern context of segregation explicitly imposed by law, constitutional obligations were not as clearly defined. Although some Northern and Western States had once had statutes or constitutional provisions requiring school segregation (the Brown decision itself concerned Kansas' segregated school system), they had long ago removed such laws from their books; their schools, however, frequently were just as segregated as Southern schools. Not until its 1973 decision in Keyes v. School District No. 1,[10] did the Court focus on this major issue of nonstatutory State involvement in the creation or maintenance of school segregation.[11]

In Keyes the Court ruled that Denver school officials violated the 14th amendment when they deliberately segregated students by race and national origin, even though no statute required segregated schools. The Court declared that, when such "intentional segregation" occurs in a "meaningful" or "substantial" part of any school district, school authorities have the burden of proving that any other disparities in racial composition in schools in the district are not similarly the result of intentional administrative acts and that the district as a whole is not a de jure segregated system.[12] The Court thereby ended efforts to label as de facto school segregation all segregation not explicitly required by State law.

The "differentiating factor" between de jure and de facto school segregation, the Court stressed, is "purpose or intent to segregate."[13] Lower courts working with this distinction do not define intent in the narrow sense in which the term is used in criminal law, but rather seek to ascertain intent by gauging the results of school officials' actions. School authorities, through their pervasive and continuing responsibilities in such areas as student and faculty assignment and the construction, location, and size of school buildings, make innumerable decisions which can foster or retard segregation.[14] Rather than engaging in a search for the motives of these officials, the courts examine the impact of their decisions on the racial composition of an individual school's student body, faculty, and staff. The standard which has evolved is that when a pattern of school segregation exists, school officials' actions and inactions which have the reasonably foreseeable effect of maintaining or increasing school segregation, and which actually do cause such segregation, create an inference of an intent to segregate. This inference of de jure segregation may be rebutted only by a convincing showing that legitimate policy reasons compelled the challenged decisions.[15]

In recent decisions involving employment and housing, the Supreme Court has stressed that proof of racial purpose rather than effect is required to establish a claim of denial of equal protection of the laws under the 14th amendment. In Washington v. Davis[16] the Court rejected the claim that a qualification test in employment violated the 14th amendment because of its disproportionate effect on minorities. In Village of Arlington Heights v. Metropolitan Housing Development Corporation,[17] the Court also rejected the claim that local zoning laws that excluded low-income housing violated the 14th amendment.

In a recent school decision, Austin Independent School District v. United States,[18] the Supreme Court reversed and remanded for further consideration, in light of Washington v. Davis, a decision that apparently was predicated on a finding of segregative effect rather than purpose. Even more recently, on January 25, 1977, the Supreme Court remanded another school desegregation case (this one requiring a metropolitan remedy in the city of Indianapolis[19]) to the court of appeals for reconsideration in light of *Washington* v. *Davis* and *Village of Arlington Heights* v. *Metropolitan Housing Development Corporation*. While these decisions have stirred concern, it seems clear that they do not make any basic change in the law of school desegregation. Both *Washington* and *Arlington Heights* explicitly approved the constitutional standard enumerated in the *Keyes* case.

Judicial authority to order desegregation only comes into existence when school officials have violated the Constitution by operating or failing to dismantle deliberately segregated school systems. State and local officials are free to decide for educational reasons to remedy segregation that is *de facto* or fortuitous--for example, by prescribing for certain schools a ratio of minority to white student reflecting the racial composition in a particular area.[20] The Supreme Court has held, however, that the Federal courts lack authority to order such efforts as "racial balance" unless there is a showing that segregated facilities were brought about by the discriminatory actions of State officials.[21]

If school officials are found to have segregated their school system intentionally and they fail to discharge their affirmative obligations to disestablish such segregation, a Federal district court may issue orders accomplishing what school authorities have not--actual desegregation. When school authorities do not propose or implement plans effectively eliminating school desegregation, the courts acquire authority to impose those remedies which in their judgment promise to provide the most effective relief.[22] The Supreme Court has approved a wide variety of desegregation techniques, and, while disavowing racial balance as a goal, has accepted the use of mathematical ratios of blacks to whites in a school system as a "starting point" for shaping judicial desegregation orders which will correct past constitutional violations.[23] Among the methods endorsed by the Court for achieving desegregation are the restructuring of attendance zones, the restructuring of grades through "pairing" or "clustering" of schools, and the transportation of students.[24]

The Court has not set out rigid guidelines which district courts must follow when fashioning appropriate desegregation remedies; it has required only that judicial remedial decrees must be "reasonable, feasible and workable."[25] The courts, consequently, possess broad and flexible powers to do what is necessary to bring school districts into compliance with the Constitution.

> The remedy...may be administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school system.[26]

In sum, the case law prior to Milliken v. Bradley made clear that the courts would not let anything but the most critical State and personal interests--such as the health and safety of students--stand in the way of the constitutional requirement of eliminating deliberate school segregation and its vestiges.

Milliken v. Bradley

By the time Milliken came before the Supreme Court in 1974, the obligations of school authorities (and in the event of their default, the courts) to take affirmative actions to eliminate all vestiges of state-compelled school segregation had been made clear. Equally apparent to the members of the Supreme Court in Milliken v. Bradley was that State and local officials had operated Detroit's schools in violation of the Constitution.[27] The issue before the Court was how the principles developed in the Court's long line of cases dealing with school desegregation remedies would be applied in the context of deliberate school segregation within a predominantly black central city surrounded by a ring of white surburban school districts.[28]

Detroit's schools over the years had become increasingly black while its surburban schools remained overwhelmingly white. By 1973 Detroit's school population was almost 70 percent black and only 30 percent white. The racial composition of the metropolitan student population was more than reversed--81 percent white and 19 percent black.[29] In such a factual setting, the lower courts concluded that desegregation efforts limited to Detroit could not desegregate many of Detroit's schools. Numerous schools would remain nearly all black. Furthermore, in the context of a predominantly white metropolitan area, even with intradistrict desegregation, the 70 percent black Detroit school system would remain as a whole racially identifiable. Because Supreme Court cases had mandated the disestablishment of the racial identity of all formerly segregated school systems, it appeared to the lower courts that a Detroit-only desegregation plan would fail to meet Supreme Court desegregation standards. Concluding that a single district plan would not meet the constitutional requirement of obtaining "the greatest possible degree of actual desegregation," the lower courts agreed that a metropolitan remedy was needed.

With evidence that a Detroit-only desegregation plan would not "work" and that an interdistrict remedy would, the issue was whether Federal courts had the remedial power to order the implementation of a desegregation plan involving the suburban school districts. The legal argument for that proposition was neither novel nor complex.

Part of the basis for the findings of constitutional violations in Detroit was that Michigan officials, not just Detroit school authorities, had by their actions and inactions contributed to the segregation of public schools in Detroit.[30] In the opinion of the lower courts, it followed that the State of Michigan had responsibility for remedying its violations. The Supreme Court on several occasions and in various contexts had ruled that the constitutional command of equal protection cannot be avoided by the manner in which a State chooses to divide its governmental responsibilities.[31] Although the extent to which States have delegated their responsibility to local school districts varies widely from State to State (and Michigan had retained control over most of its educational matters),[32] the Constitution burdens the State, not localities, with ultimate responsibility for securing equal protection of the laws.[33] As the Court had said in Brown, once the State has undertaken the obligation to provide public education, it must be available to all on equal terms.[34]

From this point of view, school districts are simply "instrumentalities of the State"[35] created for administrative convenience. They cannot, while district boundaries established by the State are not to be treated cavalierly, take precedence over constitutional rights. Consequently, the lower courts ruled that the State of Michigan could not set up its school districts as barriers to remedies essential to vindicate 14th amendment rights. Inasmuch as the State possessed full power to consolidate school districts or to effect measures crossing school district lines, both the district court and the court of appeals in Milliken ruled that they retained authority to order the State, which was at least in part the cause of the de jure segregation in Detroit, to implement interdistrict measures desegregating Detroit's schools.

A majority of the Supreme Court disagreed with this approach. In an opinion written by Chief Justice Burger, the Court held that, on the basis of the evidence before it, because the constitutional violations were apparently confined to the Detroit school district, there was no basis for remedial action crossing the Detroit school district's boundary lines. The governing principle in the view of the majority was that "the scope of the remedy is determined by the nature and the extent of the violation."[36] In Justice Burger's words, because the:

> [d]isparate treatment of white and Negro students occurred within the Detroit school system, and not elsewhere...the remedy must be limited to that system.[37]

The majority's views of the legal limitations on courts in exercising remedial authority were reinforced by its concerns about policy problems that would arise if a metropolitan remedy were ordered. Such a remedy would conflict with the "deeply rooted" tradition of local control and would raise a host of fiscal and operational problems.[38]

Having established a new and more rigorous definition of the type of violation that was needed to provide a basis for interdistrict relief, the majority could finesse the question of whether the remedial standards of "effectiveness" and "practicality" required a metropolitan remedy and instead treat the lower court decisions as a misbegotten attempt to achieve a "racial balance."[39]

Further, the majority indicated that discrimination practiced by State officials would not automatically be deemed to be an "interdistrict violation" unless the State action had an impact on more than one district. Thus, the State law that had precipitated the Milliken suit, a law rescinding Detroit's voluntary desegregation plan,[40] was discounted in that the recision may have caused segregation in Detroit, but not between Detroit and its surrounding suburbs.[41]

Pursuing the question of causation further, the majority also made it clear that, if an interdistrict violation were to give rise to metropolitan relief, it would have to meet a test of significance. The court acknowledged the existence of a blatant example of discriminatory action with interdistrict effects--the busing of black children from a black enclave in a suburb which had no high school past a nearly white high school in Detroit to a predominantly black high school in Detroit. But this situation was treated by the majority as an "isolated instance affecting two of the [many] school districts" in the metropolitan area which did not meet the test of "significant segregative" effect.[42]

Further, the majority clearly indicated that the assumptions about the effects of segregative action that it had said it would make in a case involving a single school district would not be made where the issue was metropolitan remedy.[43] In Keyes, the Court had observed that:

> [c]ommon sense dictates the conclusion that racially inspired school board actions have an impact beyond the particular schools that are the subjects of those actions.[44]

In such circumstances, it became the burden of the school board to demonstrate that its segregative acts did not have a wide impact. "Common sense" may also dictate that deliberate acts of segregation by Detroit school authorities have an impact beyond its borders. However, the majority simply asserted without explanation that in the context of Detroit this was "a very different matter."

The majority opinion evoked vigorous dissents by Justices Douglas, White, and Marshall.[45] The dissenters believed the principle that remedy must be consonant with the scope of the violation was being misapplied. By emphasizing the importance of local control over the operations of schools, the majority, argued the dissenters, allowed the State to insulate itself from the responsibility for undoing the violation which the majority acknowledges the State had at least in part caused:

> ...there is no acceptable reason for permitting the party responsible for the constitutional violation [the State] to contain the remedial powers of the Federal court within administrative boundaries over which the transgressor has plenary control.[46]

With respect to the feasibility of metropolitan school desegregation, Justice Marshall strongly disagreed with the majority's speculation that a Detroit metropolitan school desegregation plan would cause numerous practical problems. He observed that Michigan possessed the power and legal mechanisms necessary to consolidate school districts and that there were "long established Michigan procedures" for interdistrict cooperation.[47] Addressing the "basic emotional and legal" issue of student transportation,[48] Justice Marshall found that busing in a Detroit metropolitan plan would be "fully consistent" with Supreme Court guidelines and would cost considerably less than a single district plan due to the use of suburban school district buses already on hand.[49] Justice White noted that, whatever problems a metropolitan plan would cause, the majority must have thought them surmountable "for the Court itself concedes that had there been sufficient evidence of an interdistrict violation, the district court could have fashioned" an interdistrict remedy.[50]

Despite the largely negative tone of the majority opinion, the prevailing Justices did not close the door on efforts to achieve metropolitan school desegregation. In Mr. Justice Burger's opinion and in a somewhat more expansive separate concurring opinion written by Justice Stewart, they went to some lengths to suggest that metropolitan relief might be justified if an appropriate record were presented. The Justices appeared to agree that if the constitutional violation was based on the action of a single entity, the act must be a purposeful act of discrimination that is shown to have had a significant impact on the racial composition of public schools of the districts sought to be included in the metropolitan decree. In the view of the majority, an interdistrict remedy may be justified if:

- "[t]here has been a constitutional violation within one district that produces a significant segregative effect in another district";[51] or
- "district lines have been deliberately drawn on the basis of race";[52] or State officials "contributed to the separation of the races by drawing or redrawing school district lines";[53] or

- State officials "had contributed to the separation of the races...by purposeful racially discriminatory use of state housing or zoning laws."[54]

In short, under the Milliken decision, for relief to be metropolitan in scope, a showing is required that the violation that gave rise to the lawsuit has infected in a significant way all of the school districts sought to be included in the metropolitan decree.

Metropolitan School Desegregation After Milliken

While the practical meaning of the exceptions outlined in Milliken as providing a basis for metropolitan relief remains open to speculation, almost all of the judicial developments since Milliken have been favorable to those seeking such a remedy. In three important cases, lower Federal courts have determined that there were interdistrict violations that would justify a metropolitan remedy. Each of these cases, however, appears to rest on factual circumstances somewhat special to the districts involved. Accordingly, final decisions requiring metropolitan school plans in these cases will not necessarily mean that such relief will be broadly available in other cases.

In Evans v. Buchanan[55] a three-judge Federal court considered a claim for metropolitan school desegregation involving Wilmington, Delaware, and surrounding suburbs in New Castle County. Delaware had mandated segregation in public schools by law until 1954 and there was evidence that the vestiges of this dual system had never been eliminated in Wilmington. The focus of the case, however, was on a 1968 Delaware law authorizing the State board of education to accomplish a general reorganization of school districts but explicitly preventing Wilmington from being included in any reorganization. Noting that the Wilmington district was more than 80 percent black in pupil enrollment and contained more than 40 percent of the black children in the State, the court found that Delaware had not justified the differential treatment of Wilmington. While the court did not hold that the statute was racially motivated, it did rule that a law which in effect treats racial problems differently from other related governmental interests constitutes a suspect racial classification which cannot stand absent strong justification.[56] Accordingly, the court concluded that the Delaware statute was an "interdistrict violation" in that it was a type of boundary manipulation that "played a significant part in maintaining the racial identifiability of Wilmington and the suburban New Castle County school district."[57]

On appeal, the Supreme Court affirmed (without an opinion) the decision that there was an interdistrict violation, with Justices Rehnquist, Burger, and Powell dissenting.[58] The case then was returned to the three-judge court which, after several months of consideration, ordered that desegregation be accomplished through consolidation of several districts in the metropolitan area--a decision which also is being appealed.[59]

In somewhat similar circumstances, a Federal court of appeals decided that an Indiana State law, in maintaining existing school boundaries in the Indianapolis metropolitan area while establishing a form of metropolitan governance to carry out most other functions, amounts to an interdistrict violation[60] Initially, a Federal district court had found extensive acts of deliberate segregation by Indianapolis school authorities and raised the issue of whether metropolitan relief would be appropriate.[61] After the Milliken decision it was determined that such a remedy could not be applied to the whole metropolitan area, but might be appropriate for the portion within the boundaries of Uni-Gov, the metropolitan governance arrangement. The district court found that the elimination of school districts from the Uni-Gov system had a racially segregative impact because 95 percent of the black citizens of Marion County lived in

Indianapolis and approved a plan calling for the transfer of several thousand Indianapolis students to suburban schools. This decision was sustained by the court of appeals as consistent with Milliken and the Wilmington case. The Supreme Court, however, has recently vacated the court of appeal's decision and sent it back for reconsideration in light of the decisions in Washington v. Davis and Arlington Heights. The remand apparently means that an interdistrict plan may be sustained only if the lower courts find an element of racial purpose in the decision to retain present school boundaries when Indianapolis went to a form of metropolitan government.

In a third case, Newburg Area Council v. Board of Education of Jefferson County[62] another Federal court of appeals had approved a metropolitan desegregation plan for Louisville and Jefferson County, Kentucky, prior to the Milliken decision. The Supreme Court sent the case back for reconsideration in the light of Milliken. But the court of appeals reaffirmed its decision on several grounds, most relating to the impact that segregative acts by school officials in both Louisville and Jefferson County had on the composition of schools outside the district.[63] After this decision, the Louisville School Board, knowing that it was faced with a school desegregation order in any event, decided to dissolve itself and merge with Jefferson County, a prerogative it had under State law. The Supreme Court refused to review the desegregation order and a metropolitan plan went into effect in September 1975.[64]

Further confirmation that Milliken establishes a limited principle that does not pose an insuperable barrier to metropolitan relief came in Hills v. Gautreaux.[65] In that case a unanimous Supreme Court sustained a lower court decision requiring the Department of Housing and Urban Development along with the Chicago Housing Authority to develop a comprehensive metropolitan plan as a remedy for unconstitutionally segregated public housing within the City of Chicago. The court pointed out that the wrongdoer was a Federal agency (HUD) that operated throughout the Chicago metropolitan area, that no issue of an interdistrict violation existed with respect to HUD, and that the remedy would not necessarily require restructuring the operations of suburban governmental entities that "were not implicated in any constitutional violation."[66]

In making these observations, the court helped clarify the basis of its ruling in Milliken. In Gautreaux, the wrongdoer was HUD, which had joined with the Chicago Housing Authority to locate low-income housing for black families almost exclusively in black neighborhoods. This was not a localized violation; indeed, HUD itself treated the metropolitan area as the relevant housing market for its operations. Accordingly, an order to HUD to develop a plan to provide housing throughout the metropolitan area did not extend remedy beyond the scope of the violation.

This was the key difference in the court's view, not, as the court of appeals believed, that traditions of "local control" were less strong in housing than in schools or that housing desegregation was simpler than school desegregation because it does not involve busing or other logistical problems. "Nothing in the Milliken decision," the court declared, "suggests a per se rule that federal courts lack authority to order parties found to have violated the Constitution to undertake remedial efforts beyond the municipal boundaries of the city where the violation occurred."[67]

In short, the key to metropolitan remedy is the finding of a violation that is metropolitan in scope or at least not limited by city boundaries. While some have suggested that Gautreaux indicates that the Supreme Court looks with more favor on metropolitan housing than on metropolitan school remedies, the decision itself does not support this view. The relief made available was of a limited character; insofar as the violator--HUD--could make housing available by dealing directly with builders or developers it was ordered to do so. But suburban housing and zoning authorities were not subject to the order because they had not been found to have violated the law. Since the production of housing in any substantial volume ordinarily depends upon the cooperation of such local authorities, the Gautreaux decision in its current state is not expected to result in major new opportunities for minorities to obtain housing in the suburbs.[68]

The housing relief made available in Gautreaux, then, may be regarded as a useful adjunct to a metropolitan school desegregation remedy. But it is not a substitute[69]

In sum, the cases decided by the Federal courts after Milliken have confirmed the view that, while Milliken renders the quest for metropolitan school desegregation more difficult,[70] it does not make it impossible. Pursuit of these cases to a successful conclusion, however, will not unlock the door to a metropolitan school remedy throughout the country since all involve circumstances, such as the manipulation of political boundaries, that are somewhat special. A ruling of wider applicability would occur only if the Supreme Court follows Justice Stewart's view that school relief may be predicated upon the racially segregative actions of government housing officials and, faced with a record of the kind outlined in chapter II, agrees that the segregation of public schools and housing major cities is the product of government's participation in policies of racial containment.

The Need for Executive and Legislative Action

The decision in Milliken v. Bradley did not, of course, occur in a political vacuum. Neither will future decisions on the nature and scope of school desegregation relief in large cities.

Justice Marshall, dissenting in Milliken, made mention of the impact that external factors can have upon judicial decisionmaking:

> Today's holding, I fear, is more a reflection of a perceived public mood that we have gone far enough in enforcing the Constitution's guarantee of equal justice than it is the product of neutral principles of law.[71]

Whether or not the "perceived public mood" was a controlling factor in Milliken, it is clear that the case was decided in a political atmosphere highly adverse to the extension of school desegregation requirements. Since 1969 two Presidents have been strongly critical of court decisions requiring school desegregation. Administrative enforcement of the 1964 Civil Rights Act has come almost to a halt except where private citizens have obtained court orders requiring HEW to perform its statutory duties,[72] and numerous efforts have been made in the Congress--some at least partially successful--to restrict the remedies available to cure violations of the Constitution.[73]

This drumbeat of criticism from political leaders has helped intensify public sentiment and has subjected courts, civil rights groups, and education leaders seeking to find constructive solutions to problems of discrimination to increasing pressures.[74] In the process, voices in Congress and elsewhere seeking a more affirmative approach have been submerged.

In December 1972 the Senate Select Committee on Equal Educational Opportunity which had conducted the most extensive study of school desegregation ever implemented in the Congress, recommended Federal financial support for cooperative efforts to achieve integration on a multidistrict basis.[75] The Committee noted with approval the recent adoption of a provision of the Emergency School Aid Act--a law providing financial aid to meet needs incident to court-ordered or voluntary desegregation--reserving 5 percent of the funds for voluntary metropolitan approaches. In addition, the Committee urged consideration of special incentives and priority in the allocation of Federal education aid to reward districts in metropolitan areas that achieved broad-based, voluntary school integration plans[76]

But the high hopes expressed by the Committee for cooperative metropolitan efforts with ESAA assistance have not been fulfilled. Faced with anti-integration statements emanating from the White House and congressional restraints on the use of ESAA funds for pupil transportation, HEW has taken little positive action to promote use of the metropolitan provision. Most grants have gone not to new programs but to sustain and continue efforts, such as those in the Boston and Rochester suburbs and Connecticut, that were begun before passage of ESAA. Lacking an affirmative HEW initiative that might stimulate new applications, Congress decided in 1974 to eliminate the special reservation of funds for metropolitan area projects.[77]

While HEW appears undisturbed by the lack of activity under ESAA,[78] the need for legislative and executive support for metropolitan school desegregation efforts is greater than ever. As indicated in chapter III, metropolitan remedies are consistent with other initiatives that school authorities believe will improve the educational offering for all children. Such efforts require encouragement and financial assistance. Moreover, the declining school enrollments faced by many school districts can provide some of the flexibility needed to make voluntary metropolitan projects feasible. Many suburban and central city districts have schools that are half-filled and are faced with prospects of discharging teachers. Thus, interdistrict cooperation may be possible without either overcrowding or new construction and may, in fact, help to preserve facilities that would otherwise be closed and to provide an opportunity to utilize resources more efficiently.

In short, new leadership from the executive and legislative branches is urgently needed. Such leadership could revive the potential that Congress saw in passing the Emergency School Aid Act and provide needed support for the courts in assuring that metropolitan school desegregation plans are part of a total effort to improve the educational offering for all children.

In this regard, the Commission recently noted its exceptions to former President Ford's proposed School Desegregation Standards and Assistance Act of 1976 (S. 3618) which sought in Title I to narrow the definition of illegal segregation and to restrict the scope of remedies available to the Court.[79] At the same time the Commission pointed out that, with some modifications, Title II of the proposed act, which called for creation of a nonpartisan national committee of citizens to provide assistance in desegregation, could significantly contribute to the successful desegregation of the Nation's schools.

The Commission suggested that Congress double the funding recommended by the administration for such a committee and for grants so that more funds could be available to facilitate desegregation. This funding could complement Title IV of the Civil Rights Act of 1964 which was designed to provide desegregating school districts with technical assistance and expertise not available in the community. If such a committee is established or if increased funds become available for technical assistance in desegregation, Congress and the President should assure that the metropolitan approach be considered as a viable remedy for segregation.

Notes to Chapter IV

1. *See* Plessy v. Ferguson, 163 U.S. 537 (1895).

2. 347 U.S. 483 (1954).

3. 413 U.S. 189 (1973).

4. 418 U.S. 717 (1974).

5. 96 S. Ct. 2697 (1976). This excludes the Austin and Indianapolis decisions very recently decided and discussed infra.

6. Green v. County School Bd., 391 U.S. 430, 437-439 (1968).

7. *Id.* at 442. Neither school officials' good faith nor the existence of a nondiscriminatory purpose behind a desegregation plan is considered relevant. Wright v. Council of the City of Emporia, 407 U.S. 451, 462 (1972).

8. Davis v. Board of School Comm'rs, 402 U.S. 33, 37 (1971).

9. Monroe v. Board of Comm'rs of the City of Jackson, 391 U.S. 450, 459 (1968).

10. 413 U.S. 189 (1973).

11. Before Keyes, the Court had repeatedly refused to review lower court opinions requiring desegregation in the North. *See*, e.g., Davis v. School District [Pontiac, Michigan], 309 F. Supp. 734 (E.D. Mich. 1970), *aff'd*, 443 F.2d 573 (6th Cir. 1971), *cert denied*, 404 U.S. 913 (1971); United States v. School District 151 [Cook County, Illinois], 286 F. Supp. 786 (E.D. Ill. 1968), *aff'd*, 404 F.2d 1125 (7th Cir. 1968), *cert. denied*, 402 U.S. 943 (1971); Taylor v. Bd. of Educ. [New Rochelle, New York], 191 F. Supp. 181 (S.D.N.Y.), *aff'd*, 294 F.2d 36 (2nd Cir. 1961), *cert. denied*, 368 U.S. 940 (1961). Similarly the Court refused to review cases denying relief: Deal v. Cincinnati Bd. of Educ., 369 F.2d 55 (6th Cir. 1966), *cert. denied*, 389 U.S. 847 (1967); Bell v. City of Gary, 324 F.2d 209 (7th Cir. 1963, *cert. denied*, 377 U.S. 924.

12. Supra note 3 at 213.

13. Id. at 208.

14. One commentator has compiled the following composite of segregative policies and practices of school officials which the courts have found unconstitutional: "revision of attendance zone boundaries as population shifts with racial implications occurred; failure to revise boundaries to alleviate overcrowding of schools with student bodies of predominantly one race and to prevent underusage of schools with student bodies of predominantly the other race; location of new school buildings and use of portable classrooms in a manner resulting in the minimization of integration of student bodies; fixing the size of new buildings so that they had the capacity to serve only the uniracial residential area surrounding them; assignment of teachers and administrators in a way which indicated that certain schools were intended primarily for white students and certain other schools were intended primarily for black students; establishing bus transportation routes which tended to take black students to predominantly black schools rather than to predominantly white schools nearer to their homes; allowance of voluntary student transfers in situations which enabled white students to avoid attending predominantly black schools; use of optional attendance zones for racially changing residental areas, thus allowing students to choose not to attend a school in which they would be in a racial minority; failure to adopt recommended school reorganization plans which would have resulted in greater desegregation of student bodies; and allocation of school operating and maintenance funds in a way which perpetuated the inferior quality of predominantly black schools and thereby discouraged white students from attending them." Smedley, Developments in the Law of School Desegregation, 26 Vand. L. Rev. 405, 424-25 (1973.

15. See, Bradley v. Milliken, 484 F.2d 215 (6th Cir. 1973), rev'd on other grounds, 418 U.S. 717 (1974); Oliver v. Michigan State Bd. of Ed. and Kalamazoo Bd. of Ed., 508 F.2d 178 (D. Mich, 1974), cert. denied 95 S. Ct. 1950 (1975); U.S. v. Bd. of Sch. Comm'rs of Indianapolis, Indiana, 474 F.2d 81 (1973), cert. denied, 413 U.S. 920 (1973).

16. 426 U.S. 229 (1976).

17. No. 75-616, U.S. S.Ct. (Jan. 11, 1977).

18. No. 76-200, U.S. S.Ct. (Dec. 6, 1976).

19. Bowen v. United States (No. 76-515) and companion cases; judgment below vacated and remanded to the court of appeals. Order of the U.S. Supreme Court, Jan. 25, 1977.

20. Swann v. Bd. of Ed., 402 U.S. 1, 16 (1971); *see*, School Comm. of Boston v. Board of Education, 352 Mass. 693, 227 N.E. 2d 729 (1967) (upholding Massachusetts' Racial Imbalance Law).

21. Swann v. Bd. of Ed., 402 U.S. 1, 16-18, 24 (1971).

22. Brown v. Bd. of Ed., 349 U.S. 294 (1955) (Brown II).

23. *Supra* note 21 at 25.

24. *See* Foster, *Desegregating Urban Schools: A Review of Techniques*, Harv. Educ. Rev. 5 (1973).

25. *Supra* note 21 at 31.

26. *Id.* at 28.

27. Justice Burger, writing for the majority, found that the lower courts' findings of *de jure* school segregation in Detroit were in conformity with the Supreme Court's decision in Keyes v. School District No. 1, 413 U.S. 189 (1973); 418 U.S. at 738 n. 18 (1974).

28. *See* note 4, *supra*, for the court's decision by an equally divided vote which in effect denied a metropolitan school desegregation remedy for the Richmond, Va. metropolitan area.

29. Milliken v. Bradley, 418 U.S. at 765, n. 1 (1974) (White, J. dissenting).

30. *See* Milliken v. Bradley, 418 U.S. at 734, n. 16 (1974), for a summary of the State's violations which are also discussed at 484 F.2d, 215, 238-239 (1973).

31. In United States v. Scotland Neck City Bd. of Ed., 407 U.S. 484 (1972), and Wright v. Council of the City of Emporia, 407 U.S. 451 (1972), the Court held that a State legislature may not divide a school district which is in the process of disestablishing its dual school system where the

effect of the division would be to create a "substantial" disparity in the racial composition of the schools in the two districts. The principle that a State may not avoid its constitutional responsibilities by dividing governance among its subdivisions is not limited to school desegregation cases. See Waller v. Florida, 397 U.S. 387 (1970) (double jeopardy); Gomillion v. Lightfoot, 364 U.S. 339 (1960) (suffrage).

32. Milliken v. Bradley, 418 U.S. at 794-95 (1974) (Marshall, J. dissenting).

33. Hall v. St. Helena Parish School, 197 F. Supp. 649, 658 (E.D. La. 1961) (three-judge court), aff'd per curiam, 368 U.S. 515 (1962) ("The Equal Protection Clause speaks to the State. The United States Constitution recognizes no governing unit except the Federal government and the State"); accord, Cooper v. Aaron, 358 U.S. 1 (1958); Haney v. County Bd. of Educ., 410 F.2d 920 (8th Cir. 1969).

34. 347 U.S. 483, 493 (1954).

35. Reynolds v. Sims, 377 U.S. 533, 575 (1964).

36. 418 U.S. at 744. Interestingly, this proposition had been articulated in Swann as support for a broad assertion of equitable powers. 402 U.S. 1, 16.

37. 418 U.S. at 746 (1974).

38. Id. at 741.

39. Id. at 741-42.

40. Mich. Pub. Act No. 48 J 12 (1970).

41. 418 U.S. at 729-30.

42. Id. at 749-50.

43. Id. at 741-42.

44. 413 U.S. 189, 203 (1973).

45. 418 U.S at 757, 762, and 781, respectively. Justice Brennan joined the dissents of White and Marshall.

46. *Id.* at 772 (White, J. dissenting).

47. *Id.* at 811 (Marshall, J. dissenting).

48. *Id.* at 812.

49. *Id.* at 813-14.

50. *Id.* at 769 (White, J. dissenting).

51. *Id.* at 745.

52. *Id.*

53. *Id.* at 755 (Stewart, J. concurring).

54. *Id.* (emphasis added). This basis for metropolitan relief was stated only in Justice Stewart's opinion and states his view on the important question reserved in the Swann case of whether the discriminatory acts of government housing officials could serve as a basis for school desegregation orders. Other members of the majority did not express an opinion on this question because they decided, for technical reasons, that the housing issue was not before them. *Id.* at 728 n.7. Justice Stewart, however, apparently did review the housing evidence and found it insufficient to meet his announced standard. *Id.* at 756 n. 2.

55. 393 F. Supp. 428 (D. Del. 1975).

56. This principle was first enunciated by the Supreme Court in Hunter v. Erickson, 393 U.S. 385 (1969).

57. 393 F. Supp. at 445.

58. 423 U.S. 963 (1975).

59. 393 F. Supp. 428 (D. Del. 1975).

60. United States v. Bd. of School Commissioners of Indianapolis, 541 F.2d 211 (7th Cir. 1976), vacated and remanded for reconsideration in light of Washington v. Davis and Village of Arlington Heights v. Metro Housing Dev. Corp., *supra* notes 16 and 17.

61. 332 F. Supp. 655 (S.D. Ind. 1971).

62. 510 F.2d 1358 (6th Cir. 1974) *cert denied* 95 S. Ct. 1658 (1975).

63. 503 F.2d 68, 86 (7th Cir. 1974).

64. Newburg Area Council Inc. v. Board of Education of Jefferson County, 489 F.2d 925 (6th Cir. 1973); *vacated* and *remanded*, 418 U.S. 918; *reaff'd per curiam*, Dec. 11, 1974, *cert. denied*, 43 U.S.L.W. 3571 (1975). In a fourth post-Milliken decision, the full bench of the U.S. Court of Appeals for the Eighth Circuit unanimously held that the continuation of a segregated black school district outside St. Louis over a period of time when other districts were being reorganized through annexation gave rise to a duty to merge for purposes of integration. United States v. State of Missouri, 515 F.2d 365 (8th Cir. 1975)

65. 96 S. Ct. 1538 (1976).

66. *Id.* at 1545.

67. *Id.* at 1546.

68. Since the issue was not before it, the Supreme Court did not discuss under what circumstances the refusal of suburban authorities to modify zoning ordinances or otherwise facilitate the construction of low-income housing might be deemed a separate violation by these officials.

69. *See*, discussion *supra*, ch. III on the difficulties of making a housing remedy available on a short-term basis.

70. In fact, the predictability of the Supreme Court's decisions in metropolitan school desegregation cases is less certain after the Court's specifying various standards of review in different kinds of civil rights actions in the recent case of Washington v. Davis, 96 S. Ct. 2040 (1976).

71. 418 U.S. at 814.

72. *See* Adams v. Mathews, 351 F. Supp. 636 (DC. D.C. 1972), 356 F. Supp. 92 (DC D.C. 1973); *aff'd*, 480 F.2d 1159 (DC Cir., 1973); Brown v. Mathews, C.A. No. 750-1068, (DC. D.C., July 20, 1976.).

73. *See* the Equal Educational Opportunity Act, 20 U.S.C. § 1714 (1974) [the Esch amendment].

74. This period is comparable in some respects to the period after Brown, which was marked not so much by active criticism as by a failure of the executive and legislative branches to support the decision against massive resistance from Southern States. During that period, the Supreme Court simply refused to review school desegregation cases for several years, leaving lower courts to work out the details of implementation.

75. U.S. Senate, "Toward Equal Educational Opportunity", *Report of the Select Committee on Equal Educational Opportunity*, 92nd Congress, 2d Session (Dec. 31, 1972) p. 272.

76. *Id.* at 254.

77. Pub. L. 93-380.

78. *See*, U.S. Department of Health, Education, and Welfare, "Federal Assistance to Desegregating School Districts," (1976) p. 42.

79. Letter from Chairman Arthur S. Flemming to Senator Edward M. Kennedy, Aug. 24, 1976, and Commission staff analysis of S.3618, Aug. 11, 1976.

V. CONCLUSION

The focus of this report has been on the situation of minority children in the public schools of the largest cities of this nation. While elsewhere much progress has been made in desegregating public schools, it is these children of the cities more than any others who have yet to reap any benefit from the promise in the Constitution and in Brown v. Board of Education that they would be accorded the equal protection of the laws.

The migration of blacks and other minorities to the cities in search of opportunities and the suburbanization of whites has left the Nation with a new problem of racial separation--not merely segregated schools, but segregated school systems coexisting within the same metropolitan area. The problem is growing worse, not better. Despite increased mobility for some middle-class minority families, the continued and rapid migration of whites from cities to suburbs has resulted in heightened racial and economic separation. Increasingly, the boundaries between cities and suburbs have become not merely political dividing lines but barriers that separate people by race and economic class. Accordingly, the future of school desegregation in these large urban areas hinges upon whether the obligation to provide a remedy ends at the city line.

In its first opinion on this issue, the Supreme Court posed a critical question: Whether the segregation that exists between cities and suburbs is the product principally of private residential choice or of policies of discrimination in which government has played an important role, or whether indeed the causes of such segregation are known at all. The Commission believes that the evidence on this question points to clear conclusions. The concentration of blacks and other minorities in the inner city is not in any significant measure the result of individual choice or even of income differences among the races. Rather, government at all levels has played a major role in creating racial ghettos and in excluding minorities from access to the suburban housing opportunities that government aid made possible. Although national policy has now changed to favor equal housing opportunity, government has yet to undo the damage that its policies have inflicted over the past century; indeed in some areas government agencies continue to be partners to racially discriminatory activity. In short, children in metropolitan areas remain in racially isolated schools and housing because of policies of racial containment, policies to which government has contributed greatly.

If we are correct in these conclusions, a metropolitan school desegregation remedy is required under the Constitution and applicable Supreme Court decisions. We have also become convinced that such a remedy is feasible and makes good educational sense. The objections that have been voiced about metropolitan desegregation, while stemming from genuine concerns, are not valid. Adequate educational structures exist for coping with the fiscal and administrative problems occasioned by school district reorganization. Methods also are available to decentralize decisionmaking in reorganized districts so that local control and the influence of parents on the educational process are preserved and even enhanced. And, contrary to general belief, the amount of busing required to accomplish metropolitan desegregation is not extensive when compared with busing for desegregation or other purposes within districts.

Not only are the objections to metropolitan remedy unfounded, but desegregation on a metropolitan basis offers positive advantages. Education leaders long have called for cooperative endeavors in metropolitan areas to special educational needs on a more efficient basis. Metropolitan desegregation is consistent with and would facilitate these other desired educational goals. In addition, the experiences of urban counties such as Charlotte-Mecklenburg and Tampa-Hillsborough show that metropolitan plans can provide stability and educational advantages to all children. Such plans have proved far less divisive than those which place the entire burden of change on black and white working-class families in the inner city. Metropolitan school desegregation has been tried and it works.

It is true, of course, that no single approach will suffice to remedy long-entrenched practices of discrimination. Once the dual housing market is eliminated and obstacles to economic advancement are removed, minority citizens will have easier access to desegregated communities and schools throughout metropolitan areas. But housing and employment initiatives will come too late to be of benefit to today's school children now attending racially and economically isolated schools--schools that are operated in violation of the Constitution. Housing and employment remedies are a valuable adjunct to metropolitan school desegregation, but they are not a substitute.

One of the principal obstacles to a sensible and effective remedy for public school segregation is the negative climate that has been fostered by the statements and actions of some of our political leaders. A few years ago Congress took the first step toward fostering cooperative efforts to desegregate public schools in metropolitan areas. Unfortunately, this fine beginning has been obliterated by the wave of negativism of recent years. The Commission believes that it is time now for the President and Congress to provide a constructive role by providing the assistance needed to assure that court-ordered metropolitan desegregation provides the maximum educational benefits for all children and by encouraging voluntary efforts to the same end. We have recommended in recent reports dealing with equal educational opportunity,[1] the following actions that could accelerate and intensify the Federal Government's program in this area:

1. That leaders at the national, State, and local levels must accept the fact that desegregation of the Nation's schools is a constitutional imperative.

2. That the Federal Government must strengthen and expand programs designed to facilitate the school desegregation process. Congress should make new funds available for voluntary efforts to achieve metropolitan school desegregation. HEW should engage in a vigorous

effort to obtain participation of school districts in such a program.

3. That there must be vigorous enforcement of laws which contribute to the development of desegregated communities.[2]

4. That a major investment of time and resources must be made in order to deal with misconceptions relative to desegregation.

5. That under the direction of an appropriate Federal official to be designated by the President, all of the resources and authorities of the executive branch be pooled in the interest of bringing about a vigorous and effective enforcement of the Constitutional mandate to desegregate elementary and secondary schools.

6. That the Department of Health, Education and Welfare develop comprehensive guidelines on major educational issues such as metropolitan desegregation and pupil transportation. These guidelines should clearly identify the civil rights and equal educational opportunity responsibilities of public schools under the Constitution and under Federal law. These guidelines should cover the extent to which HEW will consider the role which governmental bodies other than school districts, such as

housing authorities, play in the creation of segregated school systems.

7. HEW should more vigorously enforce the law requiring equal educational opportunity. It should include in all compliance reviews an assessment of the degree to which racially-ethnically segregated schools exist and require districts to desegregate such schools by whatever lawful measures are required. Where in a metropolitan area HEW finds great concentration of minority pupils within inner cities and few in suburban schools, it should investigate the possibility that this racial-ethnic isolation was caused by an interdistrict violation of law.

While many of us, including both white and minority citizens whose children's futures are at stake, have been discouraged by the slow and tortuous pace in implementing the Constitution, we now have a solid base of experience to demonstrate that desegregation can be made to work. We have come too far toward vindicating at last the promise of equal justice under law to turn back now.

Notes to Chapter V

1. See, e.g., U.S. Commission on Civil Rights, Fulfilling the Letter and Spirit of the Law: Desegregation of the Nation's Public Schools, 1976; and The Federal Civil Rights Enforcement Effort--1974, Vol. III, To Ensure Equal Educational Opportunity, 1975.

2. At p. 157 of Fulfilling the Letter and Spirit of the Law, the Commission stated:

> The President and the Congress should make a concerted effort to provide the authority and resources necessary for facilitating metropolitan residential desegregation and thereby maximize school desegregation. Each State receiving Federal housing and community development grants should be required to establish a metropolitan agency with authority to plan and implement a program for metropolitan housing development, including provision of adequate, moderate- and low-income housing throughout the metropolitan area and various services to assist minority families to secure housing outside central cities. A special tax incentive should be granted to families who select housing in areas where residents are predominantly of another race or ethnic group. The Congress should strengthen the enforcement of Title VIII of the Civil Rights Act of 1968 by authorizing the Department of Housing and Urban Development to issue cease-and desist orders to end discriminatory housing practices. In addition, the Department of Housing and Urban Development should assign the highest priority to enforcement of fair housing laws, including an expanded Title VIII compliance review program. Such a program would require development of affirmative housing opportunities plans, providing for review and revision of local zoning ordinances, building codes, land use policies, real estate practices, and rental policies that prohibit or discourage housing opportunities for minorities.

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